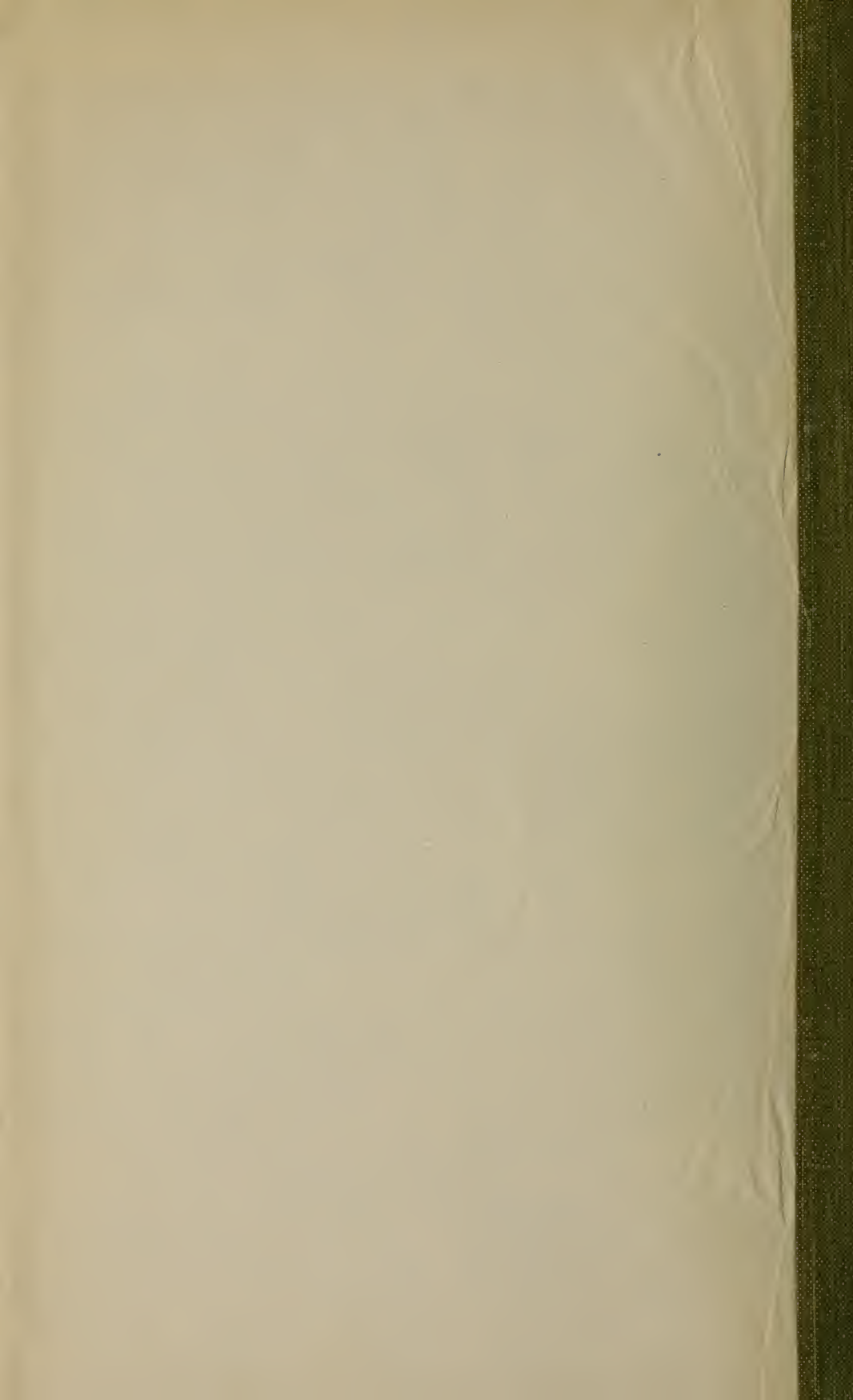


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THE BOARD OF

RAILWAY COMMISSIONERS FOR CANADA

INDEX TO VOLUME No. XIV — XV

OF

JUDGMENTS, ORDERS, REGULATIONS AND RULINGS
— OF THE BOARD OF RAILWAY COMMISSIONERS
FOR CANADA

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, April 1, 1924

No. 1

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The A. R. Williams Machinery Company, Limited, Toronto, Ont., vs. The Canadian Car Demurrage Bureau—Claim for refund of demurrage.

File No. 1700.336

The applicant company applied to the Board for a ruling regarding a claim for refund of \$82 demurrage collected by the Canadian National Railways against a car of machinery shipped by the applicant company to A. H. Howard Lumber Company, South River, which claim, when referred to the Canadian Car Demurrage Bureau, was declined.

The applicant company admits that the car arrived at South River on March 16, 1923, but states that the consignee was unable to unload it until April 14; that when the car arrived, the tracks were covered with ice and snow; that before the consignee could move the car to the point where unloading was to be made, the tracks had to be cleared, and that during the clearing a severe storm filled up the tracks again, necessitating a second clearing. The applicant company also admits that, owing to an error on its part, the car was shipped to A. H. Howard Lumber Company, South River, instead of N. H. Howard Company, Aldershot, sooner than this customer desired, and submits that, as there were empty cars standing on the siding during the time the car in question was on the siding, it could not be considered that it was through a shortage of cars that demurrage had to be assessed on this car. The applicant company states that the correct assessment for demurrage should have been only \$52.

The railway company states that after the arrival of the car at South River, the shipment was ordered to Dean's Siding for unloading; that this siding is not tariffed as a station at which freight may be accepted, but that the company treats it as a flag station; that the rate is the same from Toronto to South River and Dean's Siding; that the latter is the railway company's gravel pit siding and is owned and used by it in the transaction of general railway business; that there is no formal agreement between any one with regard to using the siding but that it allows shippers or consignees the privilege of using the siding on the understanding that such parties are responsible for keeping the track clear during the winter season when they wish to use it; that the railway company does not agree in any case to place cars beyond a bridge 1,200 feet from the siding switch; and that the shipment was placed for unloading at the consignee's mill about 2,100 feet from the said switch and required the moving of the car by horses from that point 1,200 feet.

The Canadian Car Demurrage Bureau suggested that the machinery might have been unloaded where the car stood and moved afterwards, to which the applicant company replied that the expense of doing so and the possible damage to machinery exposed to the weather would be far more than the amount involved in the claim. The applicant admits that it may have no legal rights to a refund, but asks that, as a matter of fairness under the unusual circumstances, the case be considered an exceptional one.

RULING

The record shows that the car arrived at South River March 16 p.m., consignee advised 17th p.m., ordered to Dean's Siding 21st, placed 22nd, 9 a.m., and released April 13. The demurrage rules allow in this case one day for ordering and two days for unloading. After the expiration of free time the charge is \$1 a day for the first two days and \$5 a day thereafter. Sundays and legal holidays are excluded. Therefore, two days are chargeable for delay in ordering and fifteen for delay in unloading—\$77 as against \$82 charged. It will be observed that there has been an overcharge of \$5.

The applicant company's statement that the consignee had to employ men to clear the tracks inferentially implies that this obligation rested upon the consignee and that no responsibility attaches to the railway company with respect to inability to move the car on account of the condition of the tracks, and there is no allegation that there was any delay on the part of the railway company in placing the car when the condition of the tracks permitted.

The reference to other cars on the siding which were empty has no bearing on the assessment of demurrage. The demurrage rules are specific, and their enforcement is not controlled or influenced by the fact that the party holding the loaded car may be able to point to empty cars standing on the tracks. To ensure uniformity of practice and avoid any unjust discrimination and abuse, definite demurrage rules have been formulated. These rules are of general application and, as applied to some individual cases, and apparently in the present instance, may seem to work a hardship. There is no provision in the rules entitling the applicant company to a refund. To consider this case an exceptional one, and ignore the legal status under the provisions of the rules, would, aside from its illegality, be an injustice to and a discrimination against many others whose applications have been declined. In many instances demurrage accrues through unforeseen, and in some instances unavoidable causes, but under conditions that the rules do not provide exemption for. See Hedstrom and Canadian Car Demurrage Bureau, Vol. XII, p. 37, Board's Printed Judgments, Orders, Regulations and Rulings.

On what is before it, the Board is not able to assist the applicant company by directing a refund.

OTTAWA, February 26, 1924.

Complaint of the inhabitants of the Township of York, Ont., per Starr, Spence & Fraser, Toronto, Ont., with regard to condition of repair of the sub-way at Jane street, in the city of Toronto, Ont., Canadian Pacific Railway.

File No. 16288

JUDGMENT

THE CHIEF COMMISSIONER:

I agree with the recommendation of Division Engineer Belanger, concurred in by the Chief Engineer, in that the Canadian Pacific Railway Company should pay \$12,500 towards the drainage of the Jane Street Subway, in the township of York, near Toronto.

At the hearing I thought the offer of the Canadian Pacific Railway Company a reasonable one, but was not sure as to what extent the construction of their tracks had prevented the natural drainage of the land, as alleged. It would seem from Mr. Belanger's examination, that there is not much evidence to support this contention, the principal points being that the land would have to be drained by the municipality, but it would cost more to do so by reason of being compelled to go below the depth of the subway, which would make the railway company responsible for a reasonable share of the cost.

On the other hand, the drainage seems to be an actual necessity for a considerable area of the township, regardless of the location of the subway, therefore, an order should issue directing the Canadian Pacific Railway Company to pay the sum of \$12,500 towards the construction of this work, to be paid upon progress estimates, if so requested by the municipality, as and when approved by our Chief Engineer.

OTTAWA, March 12, 1924.

Assistant Chief Commissioner McLean and Commissioners Lawrence and Oliver concurred.

Application of the City of Hamilton, Ontario, for an Order directing either the Toronto, Hamilton & Buffalo Railway Company, or the Hamilton Street Railway Company to provide the necessary protection at crossing at Main Street and Gage Avenue, Hamilton, Ontario.

File No. 22032.1

Heard at Toronto, Ontario, February 14th, 1923.

JUDGMENT

COMMISSIONER BOYCE:

Gage Avenue, Hamilton, was formerly Trolley street, and is crossed at right angles by Main street carrying two tracks, on Main street, of the Hamilton Street Railway. This crossing of two streets—one with two street car tracks on it—is bisected by an industrial, or spur track, of the Toronto, Hamilton & Buffalo Railway, which runs diagonally—approximately northeast and southwest across the intersection of Main street and Gage avenue. There is no Order for protection as yet as to the street traffic and the city asks that the whole cost of providing such protection, as is necessary, be borne and paid by one, other or both of the two railways mentioned, and that the city, because its street—Main street—is senior to both railways, be exempted from any contribution to cost of protection of its street traffic. I would point out that while so contending on behalf of the city, Mr. Waddell, K.C., its counsel, said at the hearing: (Evidence Volume 400, p. 186.)

"I do not contend that we have a case against the Street Railway Company, because they are on our highways, but as to the T. H. & B., we must look to them because we are senior to them with our highway."

The contention, as to the seniority of Main street, at this point, is, I think, indisputable. It was the original Concession Line between the 2nd and 3rd Concessions of the Township of Barton, now in the city, and was an open main thoroughfare before the other railways were built. The main highway traffic is on Main street. The question as to seniority of Gage avenue—formerly Trolley street—does not seem to be involved; at least there does not seem to be any contention made by the city based upon a claim as to its seniority.

The Hamilton Radial Railway had a track on Main street, under agreement and by-law of the city at the date of the application of the Hamilton

Street Railway Company, made April 25, 1913, to cross the T. H. & B. Ry. on Main street with two additional tracks, making three street railway tracks in all on Main street.

At the hearing, 4th June, 1913, of the application (Vol. 179 p 4275) before the Board, it was definitely understood and undertaken that the traffic of the Radial would be carried over the crossing on Hamilton Street Railway tracks, and the Order (No. 19546) went accordingly, on June 10th, 1913.

Reference was made to this Order, at the last hearing, as settling the question of protection of the street traffic, but I cannot so read the record, or so interpret the Order above referred to. The only issue, apparently before the Board, in 1913, was that between the railways and the city, the latter by its counsel, Mr. Waddell, K.C., being interested in seeing that the provisions of the agreement, dated 10th March, 1913, between the Hamilton Street Railway Company and the Corporation of the City of Hamilton, ratified by By-law of the city No. 1410, dated 10th March, 1913, respecting the basis of the application of April 25, 1913, by the former to this Board, were adhered to, and the city's rights under the same duly protected in any order made by the Board upon that application. The question of the protection of street traffic was not mentioned, and no Order or direction was made with reference thereto, very probably because, at that time, the traffic was unimportant. It is now contended that the applicant, the Street Railway Company, by reason of what took place at the hearing (June, 1913) undertook and became liable for the protection of the street traffic, but I do not so read the record.

The only reference to protection is at page 4281, Volume 179, and evidently did not refer to street protection. I quote it—

Mr. CAHILL: "That will be satisfactory. And of course the Street Railway will bear the cost of protection, being the Junior."

Mr. COLEMAN: "Yes."

The Assistant CHIEF COMMISSIONER: "What about protection then?"

Mr. COLEMAN: "We will install protection there. At present there are derails in the street railway track and semaphores on the T. H. & B. I understand from Mr. Latham that he would like to have a full interlocker there. We are going to put a watchman at that crossing anyway."

The Assistant CHIEF COMMISSIONER: "That is a detail. I want the views of you gentlemen about it."

Mr. COLEMAN: "I think a full interlocker is the safer."

The Assistant CHIEF COMMISSIONER: "If you want to put it in that is the right thing to do."

Mr. COLEMAN: "We are willing to do that."

The Assistant CHIEF COMMISSIONER: "All right then. The applicants will install a full interlocker at the crossing."

and this clearly refers to protection, as between the Street Railway and the Toronto, Hamilton and Buffalo Railway, and was covered by the agreement as to a full interlocker, and was so incorporated into the Order.

This Order was amended June 30, 1913, at the instance of the Hamilton Street Railway Company, upon consent of the Toronto, Hamilton and Buffalo Railway Company, by Order No. 19811, which provided for the elimination of the distant signals.

The Hamilton Electric Railway Company then applied for leave to operate by flagging, pending completion of the Interlocking Plant—construction of which had been delayed—and the terms upon which consent Order No. 20616 dated 21st October, 1913, issued, are shown in the consent of the T. H. & B. Ry. Co., dated October 16, 1913, which provides that a flagman be used and that the Street Railway must assume responsibility in connection with flagging move-

ments across the line of the Steam Railway "until such time as the Interlocker is installed." This is made clear by the recommendation of the Assistant Chief Engineer, 21st October, 1913, upon which Order No. 20616 issued, so that it is also clear that the appointment of a watchman was temporary protection of railway traffic, pending completion of the full Interlocker.

The full Interlocking Plant was completed in December, 1913, and the Board was accordingly notified, and it was reported upon by the Engineers of the Board, 2nd January, 1914, and in consequence thereof Order No. 21149, dated 2nd January, 1914, issued, permitting both the steam and electric railway to operate their cars and trains over the crossing at the intersection of Main and Trolley Streets, without their being brought to a stop. As I understand it, this Order automatically discharged the watchman who was there by consent only, for the purpose of flagging train movements, pending completion of the Interlocker.

The next step was an application by the Street Railway Company to dispense with signalmen between the hours of 1 a.m. and 6 a.m., and upon recommendation of the Engineering Department of the Board this was granted, by Order No. 21428, dated 27th February, 1914. All those Orders were duly served upon the Solicitor for the City of Hamilton, as a party interested in the proceedings.

By application, dated 1st December, 1921, the Steam Railway applied to amend the original Order No. 19546, in paragraph 5 thereof, by substituting the name of the Hamilton Street Railway Company and the Hamilton Radial Electric Company for that of the Toronto, Hamilton and Buffalo Railway Company. Formal consent to this was made by the two electric railway companies concerned, 28th January, 1922; was approved by the Engineers of the Board, and Order No. 32077, dated 31st January, 1922, was made, substituting the railway of the two electric railways concerned for that of the steam railway in Order No. 19546, which is the original Order, and thereby constituting the operators of the Interlocking Plant the employees of the steam railway.

Under date, June 21, 1922, Mr. Waddell telegraphed the Board as follows:

"Secretary,

"Board of Railway Commissioners,

"Ottawa.

"File Number 22032.1 Hamilton Street Railway and Toronto, Hamilton and Buffalo Railway spur crossing Main Street. Signalmen have been withdrawn by Company. City Council requests Board to direct company to restore watchmen immediately or order Toronto, Hamilton and Buffalo Railway trains to stop before crossing."

"Sgd. F. R. WADDELL,

"City Solicitor."

which, for the first time, raised the question as to protection of the street traffic by watchmen.

In reply to this telegram, Mr. Waddell was asked by the Board's letter, June 22, 1922, if the situation was that the two street railways were not bearing the burden, which they assumed by consent, and which was embodied in Order No. 32077. Mr. Waddell thereafter contended, and still contends, that the proceedings at the sittings heretofore referred to justified his assertion that street traffic protection was contemplated, which I am of opinion, as heretofore expressed, is not borne out by the record or subsequent proceedings.

The Hamilton Street Railway Company placed its views before the Board, under date July 4, 1922, contending, as I think is clearly the case, that while they admit that a watchman was appointed, that watchman was only in con-

nection with the Interlocking Plant and not for the purpose of protecting the street traffic. They stated that under the terms of the original Order, the watchman, so-called, was employed only to operate the Interlocker after the Interlocker was completed, and prior to that time, and pending its completion, for purposes of flagging the trains of both steam and electric railways.

From the date of the completion of the Interlocking Plant, and until 18th May, 1922,—some eight years—the Street Railway Company voluntarily and without contribution, protected by signalmen, the street traffic, but on the 18th May, 1922, they withdrew that voluntary protection, because as they contended, they were under no obligation, under the original Order, or under any subsequent Order of this Board, to provide protection for street traffic. Since the crossing was established by the original Order and Interlocker installed, buildings have been erected on the said streets which have had the effect of greatly obscuring the view of approaching trains—steam and electric—and the traffic on the streets has undoubtedly increased very considerably, so that protection at this crossing is unquestionably necessary as regards the highway traffic.

The question at issue, and which was the subject discussed at this hearing, upon the application of the City is as to how this protection of street traffic can best be afforded, and which corporation involved is to provide the protection, and in what proportion distribution of cost of the same shall be made.

It was strongly presented to, and urged upon, the Board at the hearing by Mr. Waddell, K.C., that Main Street being a street thoroughfare, senior to both steam and electric railways, no part of the expenditure in connection with the protection of street traffic should be borne by the City of Hamilton, i.e., Mr. Waddell insisted upon a strict compliance with what is known as the senior and junior rule.

While there is no desire to create a disturbance of that wholesome rule, I am not prepared to say that it is applicable to this case. It has been varied and relaxed according to circumstances, by various decisions of this Board. The facts in each case have to be taken into consideration.

In *City of Montreal v. Grand Trunk Railway Co.*, 22 C.R.C., at p. 445, the then Assistant Chief Commissioner of this Board, in delivering the Judgment of the Board, said as follows:—

“St. Phillippe street is senior to the railway, but the other four are junior. However, in disposing of the question of protection at crossings such as these which have been in existence for very many years, and which are made dangerous by the increased traffic on the highway as well as the almost constant use of the railway tracks, the volume of traffic on both highway and railway is an element to which more weight should be given than the question of seniority.”

C.P.R. v. Winnipeg Electric Ry., 27 C.R.C., 380.

St. Boniface v. C.P.R., 26 C.R.C., 45.

and in the Judgment of the Board *in re Guelph Radial Ry. and C.P.R.*, Judgments, Orders, etc., of the Board, Vol. 13, p. 199, the question of the applicability and relaxation of the senior and junior rule was discussed.

I think that this case falls within the decision of the Board in *City of Montreal v. G.T.R.*, 22 C.R.C., p. 444, and other cases referred to therein, and in the *Guelph Radial v. C.P.R.* *supra*; and the circumstances of this case call for the application of a similar rule to that laid down in those cases.

The principle applicable was discussed before the institution of this Board, before the Railway Committee of the Privy Council, at a meeting on 15th November, 1899, *re City of Toronto and C.P.R.*, Lansdowne Avenue Crossing

Case. See records, page 8, where the practice as to the application of the rule in cases of this kind was discussed and the principle laid down, that—

“Where there has been a crossing of a railway over a highway, or a highway over a railway, without any protection for a considerable period of time, and where that has gone on without cost to either party, but where there are new circumstances arising which make it necessary there should be a new state of affairs, such as protection of some kind in the public interest, then the third rule has invariably been that both parties must contribute some proportion. Where there has been an existing crossing in use for years, at no cost to either party by way of protection, the theory was that both parties had been benefiting. A new state of affairs having arisen, neither the junior nor senior was free from cost.”

and, at page 16 of the record in that case, the Honourable Mr. Blair, then Chairman of the Railway Committee of the Privy Council, and later, the Chairman of this Board, said:—

Hon. Mr. BLAIR: “You have heard what the rule is that this Committee has acted upon, and my experience agrees with that.”

The city had the benefit of the protection afforded by the signalmen working the interlocker, and who acted as watchmen as against street traffic, for the period of over eight years, without any cost to it. The conditions have materially changed, and whereas when the crossing was first created the street traffic was practically negligible, it is now substantial, if not congested, and protection is necessary in the interests of public safety. I therefore think that the circumstances are such as to justify the application of the rule above cited, and as the signalmen employed by the Street Railway Company have been able, until recently, to act as watchmen and take care of the street traffic, as well as operate the interlocker, I would suggest that such arrangement be continued so long as the dual duties can be satisfactorily performed, and that the crossing be protected by such watchmen, between the hours of 6 a.m. and 12 midnight; the watchmen to be employed by the Hamilton Street Railway Company, and their wages to be apportioned between the parties, as follows: 20 per cent by the city of Hamilton, 30 per cent by the Toronto, Hamilton and Buffalo Railway Company, and the balance of 50 per cent by the Hamilton Street Railway Company.

We were asked at the hearing to declare the respective liability of steam and electric railways in the city, in case of accident resulting from the employment of a joint watchman. While I am aware that in previous cases, such as the Royce Avenue Crossing Case, Toronto (which was referred to at the hearing), such an order has been made, Mr. Chisholm pointed out that this case was not similar to the Royce Avenue Crossing Case, inasmuch as in that case the railways were parallel. In any event this Board does not adjudicate on questions of damages resulting from negligence; neither, therefore, should this Board make orders, or assume to fix principles, which might encroach upon the full jurisdiction of the provincial courts in such actions for damages.

Duthie vs. G.T.R. 4 C. R. C. 304, may be referred to.

If this Board declares that the employment of the joint watchmen, and contribution by the two railways and the City to their salary, shall not constitute them the agents of any one of the parties concerned, the liability for damages resulting from the accident would naturally fall upon the railway company—steam or electric—through whose negligence, or mismanagement the

Provincial Court found that such accident was occasioned, and there would be no interference with the functions and jurisdiction of the Provincial Courts, before whom such claims for damages might be made.

I would dispose of this question in that way and leave the question of agency of the watchmen and responsibility of either of the railways concerned, for accident, with consequent liability for damages resulting from negligence of either of the railways, to the decision of the forum having full jurisdiction over such question, upon the particular facts presented to it in any issue that may arise in which the question of such agency and of responsibility is involved. It is difficult to conceive of any conditions which would involve the City in such an issue, as an accident could ordinarily only occur through the street traffic being brought into collision with the railway traffic; the issue then being confined to the question of whether steam or street railway was responsible in damages, with the usual considerations as to contributory negligence of the persons using the streets and involved in such an accident. The Order disposing of the application should state that this Board does not, in the circumstances, see fit to make any declaration as to the agency of the watchmen so employed, or as touching the liability of any of the parties concerned, for damages resulting from the negligent operation of either the steam or electric railway trains, or cars, at the crossing, or for any negligent operation of the Interlocking apparatus.

The cost of supplies of the watchmen would be apportioned in the same way as their wages.

The long period during which the Hamilton Street Railway has protected the crossing would more than offset Mr. Waddell's claim that the City should be reimbursed for what it has paid since the discontinuance of protection by the Street Railway and during the time that the City has employed the watchmen.

The protection should be installed forthwith.

Ottawa, March 15, 1924.

The Chief Commissioner, Hon. F. B. Carvell, K.C., concurred.

ORDER No. 34819

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, 1919, for approval of Supplement No. 2 to its Standard Mileage Freight Tariff, C.R.C. No. 688, on file with the Board under file No. 28918.1.

SATURDAY, the 8th day of March, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Supplement No. 2 to its Standard Mileage Freight Tariff, C.R.C. No. 688, on file with the Board under file No. 28918.1, be, and it is hereby, approved; the said supplement, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34828

In the matter of the application of the Quebec Central Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, 1919, for approval of Supplement No. 1 to its Standard Mileage Freight Tariff, C.R.C. No. 806, on file with the Board under file No. 29641.

MONDAY, the 10th day of March, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Supplement No. 1 to its Standard Mileage Freight Tariff, C.R.C. No. 806, on file with the Board under file No. 29641, be, and it is hereby, approved; the said supplement, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 396

In the matter of the General Order of the Board No. 379, dated April 4, 1923, amending the Rules Relative to the Inspection of Locomotives and Tenders, prescribed by General Order No. 289, dated March 24, 1920, with respect to the equipment of locomotives in road service with pilots.

File No. 21351.1

MONDAY, the 10th day of March, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading what is filed on behalf of the Central Vermont Railway Company, and the report and recommendation of its Chief Operating Officer,—

The Board orders: That the said General Order No. 379, dated April 4, 1923, as amended by General Order No. 390, dated January 25, 1924, be, and it is hereby, further amended by inserting the words "Central Vermont" before the words "and Great Northern," in the fifth line of the paragraph with the heading "Pilots."

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34858

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under section 179 of the Railway Act, 1919, for permission to close Cardiff Station, in the province of Alberta.

File No. 4205.363

WEDNESDAY, the 19th day of March, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

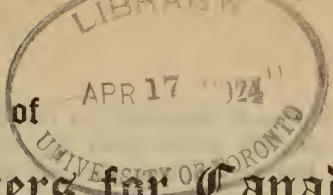
A. C. BOYCE, K.C., *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is filed in support of the application, and the consent of the Municipal District of Ray No. 549, filed,—

The Board orders: That the applicant company be, and it is hereby, authorized to remove its station agent at Cardiff, in the province of Alberta.

S. J. McLEAN,
Assistant Chief Commissioner.



The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, April 15, 1924

No. 2

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Complaint of Mr. Herbert Oyler, Kentville, N.S., against refusal of Dominion Atlantic Railway to take count of apples shipped from complainant's warehouse at Kentville and Sheffield Mills Stations, and to sign Bills of Lading for quantities of apples loaded.

File No. 24720

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner:*

This case was heard before me at Kentville, N.S., on the 10th day of August last, in the presence of representatives of the railway company and the applicant.

The question of granting clean bills of lading on fruit shipments from the Annapolis Valley was heard before the Board at Montreal, on the 24th of September, 1914, upon which a carefully prepared judgment was written by the present Assistant Chief Commissioner of this Board, and it was decided that the railway company should provide clean bills of lading for carload shipments of apples from warehouses located within one hundred yards of agency stations. Reasonable provision as to notice and as to the time of loading was to be made as would prevent undue expense in checking.

At the hearing in Kentville, complaints were made that clean bills of lading were not being given to Mr. Oyler, the applicant, at two sidings; one at Auburn, and the other at Kentville. As to the Auburn warehouse, I find that this warehouse is 370 feet from the centre of the station building and, therefore, does not come within the provision above set forth. In the case of Kentville, the warehouse is within 300 feet of the passenger station, and at the time the order was made was within 300 feet of the freight station, being the point on the company's premises from which they contend the freight business is managed. For purposes of their own, in order to improve the operation of the railway, a few years ago the freight station was moved from its original location to a point some distance west of its former location and is now more than 100 yards away from Mr. Oyler's warehouse.

I think, if it were necessary in deciding a case of this kind, I would hold that the general passenger station would be the agency station referred to in the judgment; but entirely regardless of this question, my opinion is that as the company moved their freight station from the location which it occupied at the time the order was issued, for their own purposes, it should not affect the

applicant and, therefore, in the future, he should receive clean bills of lading for shipments made from his warehouse in Kentville, so long as it remains within 100 yards of the agency station.

OTTAWA, March 20, 1924.

Assistant Chief Commissioner McLean concurred.

Re Circular No. 202 of the Board, dated April 18, 1923, re Use of Deckless Engines in Road Service.

File No. 31840

Mr. W. L. Best, Legislative Representative, Brotherhood of Locomotive Firemen and Enginemen, complained that the Edmonton and Dunvegan, the Esquimalt and Nanaimo, and the Kettle Valley Railways had increased the number of locomotives to the deckless type in road service since the Board's Circular No. 202, April 18, 1923, was issued, which circular directs: "That such locomotives as are now in road service on the different railways be worked into switching service as the opportunity offers."

The matter was taken up with the companies concerned, and the Canadian Pacific replied that the railways mentioned while operated as separate organizations under the general control of that company all three depend to a large extent for their motive power on the Canadian Pacific, and that the number of engines leased to them from time to time fluctuates with the demands of traffic.

RULING

The Board has given consideration to the matter, and is of the opinion that the three subsidiary lines mentioned above, together with the Dominion Atlantic Railway, should all be considered as part of the Canadian Pacific Equipment List, and have Circular 202 apply to it, that is to say, if the Canadian Pacific Railway had to increase its switching power on its main system that instead of procuring a new switching engine one of these deckless engines be withdrawn from road service even if operating on one of the subsidiary lines, and be converted to the switching type, and the Board rules accordingly.

OTTAWA, March 21, 1924.

ORDER No. 34867

In the matter of the application of the Express Traffic Association of Canada for approval of Supplement "G" to the Express Classification for Canada No. 5, on file with the Board under file No. 4397.72.

WEDNESDAY, the 26th day of March, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer, and the consents of the Canadian Manufacturers' Association and the Boards of Trade of Montreal and Toronto, filed,—

The Board orders: That the said Supplement "G" to the Express Classification for Canada No. 5, on file with the Board under file No. 4397.72, be, and it is hereby, approved; the said supplement to be published as "Supplement No. 9 to the Express Classification for Canada No. 5."

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34877

In the matter of the application of the Grand River Railway Company, under Section 330 of the Railway Act, 1919, for approval of Supplement No. 2 to its Standard Freight Mileage Tariff C.R.C. No. 57, on file with the Board under file No. 29598.

SATURDAY, the 29th day of March, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*
 S. J. McLEAN, *Assistant Chief Commissioner.*
 A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Supplement No. 2 to the Grand River Railway Company's Standard Freight Mileage Tariff C.R.C. No. 57, on file with the Board under file No. 29598, be, and it is hereby, approved; the said supplement, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34879

In the matter of the application of the Lake Erie and Northern Railway Company, under Section 330 of the Railway Act, 1919, for approval of Supplement No. 3 to its Standard Freight Mileage Tariff C.R.C. No. 165, on file with the Board under file No. 18034.109.

SATURDAY, the 29th day of March, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*
 S. J. McLEAN, *Assistant Chief Commissioner.*
 A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Supplement No. 3 to the Lake Erie and Northern Railway Company's Standard Freight Mileage Tariff C.R.C. No. 165, on file with the Board under file No. 18034.109, be, and it is hereby, approved; and the said supplement, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34898

In the matter of the application of the Quebec Central Railway Company, under Section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff, C.R.C. No. 260, on file with the Board under file No. 29641.

TUESDAY, the 1st day of April, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the Quebec Central Railway Company's Standard Passenger Tariff, C.R.C. No. 260, on file with the Board under file No. 29641, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34906

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," under General Order No. 119, for leave to remove its station agent at Bankhead, in the Province of Alberta.

File No. 4205.354

THURSDAY, the 3rd day of April, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is filed in support of the application, no objection having been offered by the residents of the Bankhead district,—

The Board orders: That the applicant company be, and it is hereby, granted leave, until further order, to remove its station agent at Bankhead, in the province of Alberta.

F. B. CARVELL,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, April 22, 1924

No. 3

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GENERAL ORDER NO. 398

FRIDAY, the 11th day of April, A.D. 1924.

In the matter of Rules and Regulations Governing the Construction and Filing of Freight and Passenger Schedules with the Board.

File No. 606.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

In pursuance of the powers expressly conferred by Sections 324 and 325 of The Railway Act, 1919, and of all other powers possessed by the Board in that behalf—

The Board orders as follows:

1. That the Rules and Regulations Governing the Construction and Filing of Freight and Passenger Schedules, attached hereto marked "A" and published in Circular No. 204, be, and they are hereby, approved for the use of railway companies, or properly authorized agents thereof, who file freight and passenger schedules with the Board.

2. That,—

(a) Orders No. 350, dated February 9, 1905; No. 357, dated February 9, 1905; No. 460, dated May 16, 1905; No. 4277, dated June 30, 1908; and General Orders No. 23, dated December 21, 1908; No. 33, dated March 29, 1909; No. 60, dated June 27, 1910; No. 62, dated August 15, 1910; No. 277, dated December 29, 1919; No. 388, dated December 20, 1923;

(b) General Order No. 14, dated July 30, 1908, in so far as it applies to Freight and Passenger Tariffs;

(c) Conflicting portions of General Order No. 146, dated July 17, 1915,—be, and they are hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

"A"

CIRCULAR NO. 204

RULES AND REGULATIONS GOVERNING THE CONSTRUCTION AND FILING OF FREIGHT AND PASSENGER SCHEDULES

Effective June 1, 1924

The term "Joint Rate", as used herein, means a rate or fare that extends over the lines of two or more carriers.

"Joint Tariffs" are those which contain joint rates.

Size of tariffs.
Numbering
tariffs.
Filing advices.

1. Freight and passenger schedules must be of uniform size, namely, eight by eleven (8 x 11) inches, and be consecutively numbered "C. R. C. No. . . ." at the top (separately for the freight and passenger issues), in addition to the serial number of the carrier. All schedules filed with the Board must be accompanied by a filing advice in duplicate (see appendix 'A') numbered consecutively. Filing advices must contain a description of the schedule or schedules covered thereby. The original advice will be retained and the duplicate receipted and returned.

Number of
tariffs to
be filed.
Postage free if
mailed in
Canada.

2. Standard tariffs must be filed in duplicate. Except as otherwise provided herein, but one copy of other schedules is required to be filed with the Board and should be addressed to the Chief Traffic Officer, Board of Railway Commissioners for Canada, Ottawa, Ont. If mailed in Canada, and the envelope is plainly marked "O.H.M.S.", no postage is required.

Statutory
notice at
Ottawa.

3. The act of mailing is not construed as filing. Schedules must reach Ottawa in time to give at least the statutory notice (freight schedules—three days for reduction, thirty days for advance; passenger schedules—three days for advance or reduction), or such other notice as the Board may in special cases direct.

Joint tariffs
applying from
points on
more than
one railway.

4. (a) Joint tariffs applying from points on more than one railway must be filed by each of the initial carriers under its own C.R.C. number, unless issued and filed by an agent under power of attorney.

Joint tariffs
applying
in both
directions.

(b) In the case of a joint tariff applying in both directions, the carrier at each end of the route is an initial carrier and the tariff must therefore be filed by each under its own C.R.C. number and must give the required notice.

Consent of each such carrier is a condition precedent to any change in the rates of such tariff in either direction.

Joint tariffs
from points on
Terminal or
Switching
carriers.

5. Joint tariffs naming rates applying from points on a switching or terminal carrier of which such carrier receives a proportion which is not absorbed by the connecting carrier, must be filed by the switching or terminal carrier.

Filing of
joint tariffs
Canada to
United States,
or between
points in
Canada
through
United States.

6. Section 338 of the Railway Act requires the filing of joint tariffs applying from a point in Canada through a foreign country into Canada or from a point in Canada to a foreign country by the several companies. This is construed to permit filing by the initial Canadian carrier on behalf of itself and the "several companies" referred to in the section.

7. Schedules which fail to give the required notice will be returned to the sender, stamped "Rejected by the Board of Railway Commissioners" and covered by a form letter.

Rejection of
schedules.

The C.R.C. number of the rejected schedule must not again be used, and the substitute must show on the title page the following:—

"Issued in lieu of (reference here to the rejected schedule),
rejected by the Board of Railway Commissioners for Canada."

Through rates between points in the United States and points in Canada published in tariffs filed with both the Interstate Commerce Commission and the Board of Railway Commissioners for Canada which are rejected by the Interstate Commerce Commission will be marked as rejected in the Board's files and returned to person filing.

Issuing carrier or agent is requested to immediately notify the Chief Traffic Officer of the Board of such rejection.

8. If the total charge per car under a commodity rate and specified minimum weight exceeds the charge per car under the class tariff and classification minimum weight, the tariff must carry a notation that the class rate and actual weight (subject to Classification minimum) will apply, if lower.

Commodity
tariffs with
minimum
weight greater
than classification
weight.

9. Commodity descriptions must be explicit, so as to leave no room for supposition or analogy.

Commodity
rates specific.

10. (a) No freight rate may be increased until it has been in force at least thirty days.

Freight rates
to remain in
force at least
30 days.

(b) Freight rates may be issued to expire on a named date, but such date must not be less than thirty days after the effective date.

Freight rates
expiring by
limitation.

(c) If a tariff is filed on statutory notice, cancelling another tariff, and after such filing and prior to the effective date of the new tariff, a supplement to the tariff to be cancelled should be lawfully issued, rates in such supplement could not be continued in effect for thirty days for the reason that cancellation of a tariff also cancels supplements thereto.

Supplement
to freight
tariff which is
to be cancelled.

In such cases supplements containing changes not included in the tariff that is to become effective should be issued to both tariffs; shall contain no other matter than the rates sought to be made effective, and will be exempted from the provisions of rule 34.

11. A schedule which omits any rate included in any schedule cancelled thereby must show what rate will thereafter apply, or so indicate if the rate or service is abolished; and a supplement confined to notice of cancellation only, must give the same information.

Cancellation
notice to show
where rates will
thereafter
be found.

12. Tariffs containing rates for the carriage of explosives must also contain a notice that such rates are governed by the Regulations for the Transportation of Explosives and other Dangerous Articles, approved by the Board of Railway Commissioners for Canada, and give reference to the C.R.C. number of the railway publication embodying these regulations.

Tariffs containing
rates on Explosives
and other
Dangerous
Articles to
give reference
to Board's
Regulations.

13. A competitive tariff which owing to the exigencies of competition is urgently required to be brought into immediate effect without previous notice to the Board may be acted upon before filing with the Board, but the company must forthwith file the tariff together with a clear statement of the nature of the exigency and the ground for so acting.

Competitive
tariffs may
be made
effective without
notice.

Competitive rates to be indicated.

Routing.

Rates for newly constructed lines—one day's notice.

Separate tariff of Rules and Regulations.

Official Distance Table to be filed.

List of Tariffs to be filed.

14. A schedule containing both competitive and non-competitive rates must indicate the competitive rates by reference mark and note.

15. A joint tariff applies only by the route or routes therein specified, but if for convenience or through error of carriers, shipments are forwarded via other junction points or routes, but over the lines of carriers parties to the tariff, the rates shown therein will apply.

When no routing is shown the rates are understood to apply via all reasonable and practicable routes, but over the lines of carriers parties to the tariff.

16. New rates issued to cover newly constructed lines may be made effective on one day's notice; all other new rates must give the notice required by the Act.

17. A carrier or an agent may publish under a C.R.C. number, post and file, a separate schedule containing rules and regulations which are to govern certain tariffs, and such schedules may be made part of the tariff by the following specific reference: "Governed by Rules and Regulations shown in C.R.C. No. and successive issues thereof."

18. Each carrier shall publish and file in duplicate, under a C.R.C. number, in both the freight and passenger series, size 8 by 11 inches, an "Official Distance Table," which shall contain the exact distance, extended not to exceed two decimal points, between its stations. Prepay stations must be indicated by symbol and at points where either carloads or less than carloads are not accepted the information must be shown. There must also be shown the names of the points at which freight traffic may be interchanged with the lines of connecting carriers, the names of the carriers with which freight traffic may be interchanged at such points, whether carloads or less, or both, and the method of interchange (switch connection or cartage). If connection is made through an intermediate carrier it must be so shown.

The freight Official Distance Table shall contain the following clause:—

"In computing the distance governing traffic handled under mileage rates to unloading or from loading sidings not named herein, the mileage applicable to or from the nearest station or points thereto shall be used."

Tariffs which contain mileage rates shall give reference by C.R.C. number to the Official Distance Table.

NOTE.—This rule applies to both freight and passenger mileage. One list containing both freight and passenger mileage will be deemed sufficient, but if both are included in one list, C.R.C. numbers must be allotted in both the freight and passenger series and copies filed under separate filing advices.

19. Each carrier shall publish, with proper C.R.C. number, and file in duplicate, a complete list of tariffs naming it as an initial or forwarding carrier, which are in effect. Such list shall show, (a) C.R.C. number of each tariff; (b) name or initial of carrier or agent by whom tariff is issued; (c) brief description of the character of tariff (which should be done in freight tariffs by using the term "class," "commodity," or "class and commodity," name of commodities as "Grain and Grain Products," "Iron and Steel Articles," etc.); (d) concise statement of the points between which tariffs apply.

Supplements to tariffs need not be included in this list. If any changes are made, the list shall be corrected to date either by reissue each month, or by supplementing each month, and reissue every twelve months.

Commodity tariffs shall be entered alphabetically according to the principal commodity, and those applying to different kinds of the same commodity shall be grouped together. For example: "Lumber"—"Hardwood"; "Lumber"—"Fir"; etc.

NOTE.—This rule applies to both freight and passenger tariffs. One list containing both freight and passenger tariffs will be deemed sufficient, but if both are included in one list, C.R.C. numbers should be allotted in both freight and passenger series, and copies sent to the Board under separate filing advices.

20. Joint tariffs and supplements thereto shall be filed with the Board by proper officer of the initial carrier, or by an agent designated to perform that duty, and concurrence, as per forms herein prescribed, of every other carrier participating in such joint tariffs and supplements thereto covering traffic which is to pass over any continuous route in Canada, must be filed with the Board. Concurrence in joint tariffs.

Notice of concurrence is not required in international tariffs, tariffs applying from a foreign country through Canada into a foreign country, nor from foreign carriers in tariffs applying from Canada through a foreign country into Canada.

One or other of the following forms of concurrence certificate may be used in notifying the Board of assent to and concurrence in joint tariffs, or supplements thereto, applicable between points in Canada, which have been published and filed by any initial carrier or agent, and to which the carrier giving assent and concurrence has been made a party. The certificate shall be printed on paper ten and one-half inches long by eight inches wide and mailed to the Chief Traffic Officer of the Board.

(a) "SPECIFIC CONCURRENCE CERTIFICATE"

(Name of concurring carrier in full)

..... Department
(Place and date).....

No. C.C. (From No. 1 progressively).
The Board of Railway Commissioners for Canada.

This is to certify that the (name of concurring carrier in full) assents to and concurs in the publication and filing of the joint schedules described below, and hereby makes itself a party thereto and bound thereby:—
(Full title and C.R.C. number of schedule concurred in).

Date effective
Issued by Company.

(b) "LIMITED CONCURRENCE CERTIFICATE"

(Name of concurring carrier in full)

..... Department
(Place and date).....

No. L.C. (From No. 1 progressively).
The Board of Railway Commissioners for Canada.

This is to certify that the (name of concurring carrier in full) assents to and concurs in joint tariffs and supplements thereto that may hereafter be pub-

lished and filed by the (name of carrier in full), applying via (name of junction point with concurring carrier), or from (names of points or description of territory), in which this company is named as a participant, in so far as such schedules contain rates or regulations which apply within Canada, via this company's line to (not from) (description of territory), and hereby makes itself a party thereto and bound thereby.

(c) "GENERAL CONCURRENCE CERTIFICATE"

(Name of concurring carrier in full)

..... Department
(Place and date).....

No. G.C. (From No. 1 progressively).

The Board of Railway Commissioners for Canada.

This is to certify that the (name of concurring carrier in full) assents to and concurs in all joint tariffs and supplements thereto that may hereafter be published and filed by the (name of carrier or agent in full), in which this company is named as a participant, in so far as such schedules contain rates or regulations which apply within Canada, to or via (not from) this company's points, and hereby makes itself a party thereto and bound thereby.

The "Specific" Concurrence Certificate shall be signed with the name and title of the official of the concurring carrier appointed by by-law of the company to prepare and issue tariffs.

When 'Specific' Concurrence Certificates are used three copies must be made by the concurring carrier, one marked "original," one "duplicate," and one marked "triplicate," and forwarded to the carrier who issues the tariff. The latter carrier will then file with the Board the three copies together with the tariff to which they refer, and the duplicate will be stamped and returned to the concurring carrier, and the triplicate to the carrier issuing the tariff, as a receipt.

Certain passenger tariffs are filed from Winnipeg, the individual certificates for which are filed from Montreal.

In such cases the certificate may be filed prior to the tariff but must be accompanied by letter of explanation.

The 'Limited' and 'General' Concurrence Certificates shall be signed in person by the official of the concurring carrier appointed by by-law to prepare and issue tariffs.

The company or agent which prepares and issues the joint schedule shall show therein, in small type against the name of each of the concurring companies, the "C.C.," "L.C.," or "G.C." number as the case may be, of the certificate of concurrence of such company in such joint schedule.

Two copies of "Limited" and "General" certificates of concurrence shall be filed with the Board, one marked "duplicate," to be stamped with the date of receipt by the Board and returned to the sender.

Under section 325 of the Railway Act, the only procedure in the case of non-concurrence in a joint schedule must be by formal application by the objecting company to the Board for an order disallowing the said schedule.

21. If a carrier authorizes an agent to file its tariffs and supplements thereto, or certain of them, official notice of such authorization and of acceptance of responsibility by the carrier for the acts of such agent in the consecutively numbered form as hereinafter specified, must be filed with the Board:—

.....Company.

KNOW ALL MEN BY THESE PRESENTS:

That the Company has made, constituted and appointed, and by these presents does make, constitute, and appoint its true and lawful attorney, and in its name, place, and stead, to file certain tariffs of freight (or passenger) tolls, to wit (here describe the particular series, if limited, or particular territory, for which tariffs are to be issued), and supplements thereto, as required of railway companies by the Railway Act of the Dominion of Canada, and by the Regulations of the Board of Railway Commissioners for Canada, and the said Company does hereby give and grant to its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue thereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

The
(Name of carrier)

By
(Its.....President)

Attest:

.....
Secretary.

Dated at
this day of
A.D.

(a) Powers of attorney shall continue in force until revoked by formal and official notice of revocation placed in the hands of the Board of Railway Commissioners for Canada at Ottawa, at least thirty days before the said notice shall become effective.

Powers of attorney may also be cancelled by issue of new power of attorney upon thirty days' notice.

(b) If two or more carriers appoint the same person as agent for the filing of tariffs and supplements thereto, each of them will be required to file with the Board power of attorney, in the form prescribed, appointing him their agent, and the concurrence of every other carrier participating in any tariff or supplement thereto which is filed by him must be on file with the Board.

(c) An agent who issues fast freight line billing instructions, which are, by reference, made part of the carrier's tariff, stands in the same light and position as an agent who issues tariffs, and the same authority to act will be required.

(d) Such joint agent, duly authorized to act for several carriers, shall file joint tariffs under consecutive C.R.C. serial numbers of his own.

(e) No officer of a railway may be appointed to file tariffs for another railway. The form of power of attorney herein prescribed must be used only when an outside agent is authorized to prepare and issue certain tariffs, such as the Transcontinental, Central Freight Association, Canadian Freight Association tariffs, etc.

(f) Agents publishing tariffs under power of attorney must include therein the names of the carriers for whom they act together with the P.A. number of the power of attorney on file with the Board.

Changes in
rates to be
indicated
by symbol.

22. Tariffs issued by railways in Canada shall indicate advances by the symbol "A" and reductions by the symbol "R," with necessary explanatory note, in the following manner, namely:—

1. In schedules which show the rates opposite the stations:—

The proper symbol to be shown against each rate, or each rule or regulation, changed.

2. In schedules in which the rates appear in a table separated from the station list:—

(a) Unless the station groupings have been varied relatively to their rates; the proper symbol to be shown in the rate table in the manner prescribed in section 1 hereof:

(b) If the station groupings have been varied relatively to their rates; the proper symbol to be shown against the reference on the station page to the rate table, and against each rule or regulation changed.

If the columns of rates are so close together as to leave insufficient space for the symbols, and in such cases only, increases shall be printed in full-face type, and reductions in italics, with the necessary explanatory note.

If ninety per cent or over of the rates on a page are advanced or reduced, symbols may be omitted provided the changes are clearly indicated on the page, thus: "All rates on this page are advances": "All rates on this page are advances, except as otherwise indicated," etc.

If it is found impracticable to indicate changes in schedules by the methods herein prescribed, application accompanied by full explanation may be made to the Board for permission to waive the above requirement.

Schedules
issued to give
effect to
Orders and
Judgments.

23. Schedules issued to give effect to judgments or orders of the Board shall give reference to the number and date of the Order or date of the judgment as follows:—

"Issued in compliance with Order of the Board of Railway Commissioners for Canada No..... dated....." or "Issued under judgment of the Board of Railway Commissioners for Canada, dated.....".

C.R.C. num-
bers to be
consecutive;
advice to be
given when
not so filed.

24. Each carrier is required to file tariffs under C.R.C. numbers which are presumed to be used consecutively. Occasionally a tariff is received which does not bear the C.R.C. number next in numerical order to that borne by the last one filed. This is sometimes occasioned by the missing numbers having been assigned to a tariff which is in the course of preparation.

Request is made that in so far as possible, carriers will file tariffs in consecutive order of the C.R.C. numbers. If from any cause this is not done, the tariff that is filed with a C.R.C. number that is not consecutive with the last one filed, shall be accompanied by an explanation of the omission in filing.

Circulars
affecting tolls
to be filed.

25. Circulars of general instruction which affect tolls shall be printed on paper of regulation size (8 by 11 inches) and given C.R.C. consecutive numbers in the regular tariff series.

FREIGHT TARIFFS

26. Under the provisions of section 344 of the Railway Act, railway companies subject to the Act are authorized to issue special rate notices between points which are not competitive in the following cases, namely:—

Special Rate
Notices.

(a) To provide for the prompt shipment of any freight which may unexpectedly offer, and for which no suitable tariffs have been prepared, on condition that the filing and publication of such tariffs be immediately proceeded with. Except where special notice has been issued to cover an individual consignment and the rate is not of a permanent character.

(b) To provide for the disposition of shipments which may have been forwarded to the wrong destination, or which have been refused by the consignees, by returning them to the original points of shipment at less than the ordinary tariff rate, or by reforwarding at a reduced rate from the first to a second destination, in which case the published rate from the point of shipment to the first destination, added to the reduced rate from the first destination to the second, shall not be less than the published rate for a through haul from the original shipping point to the second or final destination.

(c) To provide for the carriage of small sample or trial shipments for testing purposes, with a view to opening up business, as, for example, a trial shipment of ore from a new mine to the smelter, at actual weight at the carload rate.

(d) To provide for the removal of live stock by rail from exhausted grazing grounds to new pastures on the ranches of the northwest, for subsequent reshipment to the market.

(e) To permit the railway companies to carry such freight as coal and firewood for their own employees at reduced rates, which may be filed individually with the Board, or as a general notice.

(f) To provide for the movement of grain that may remain in country storehouses or elevators at the cleaning up of the season's business preparatory to the reception of the new crop, at carload rate and reduced minimum weight.

Not more than one such special rate shall be issued per annum for each storehouse or elevator for each variety of grain.

These Special Rate Notices shall be numbered consecutively and be mailed to the Chief Traffic Officer.

They shall give reference to Rule No. 26 of the Board's Circular No. 204 and the particular section thereof under which issued; they shall also show the tariff rate, if any, that would have been charged in the absence of such notice, and shall exist merely for the purpose of giving effect to the rate to be charged for the specific shipment mentioned therein.

When rates covered by Special Rate Notice are reissued in regular tariff publication a cancellation supplement must at the same time be issued to the Special Rate Notice which shall give reference by C.R.C. number to the tariff publication in which rates are shown.

27. Railway companies having general offices at Winnipeg or west thereof, are authorized in cases of emergency only, to notify the Board by telegraph of a proposed change in rates, provided—

Telegraphic
advice of
changes in
freight rates,
in emergency
cases, from
carriers in
distant
territory.

(a) That the new schedule be printed and publicly posted for the full period required by the Act, namely, three days in the case of a reduction, and thirty days in the case of an advance;

- (b) That the telegram to the Board plainly state the changes proposed to be made in the rates, and the effective date thereof;
- (c) That the new tariff be mailed to the Board not later than the date of the publication; and
- (d) That a copy of the telegram be attached to the printed tariff filed with the Board.

Nature of
tariff not
to be changed
by supplement.

28. A tariff having been filed, containing class rates only, it is not permissible to add commodity rates by means of a supplement thereto; likewise class rates should not be added by supplement to a filed commodity tariff.

The additional rates should be put in effect by means of a separate tariff.

The above does not prohibit the filing of a tariff containing both class and commodity rates, but the nature of the tariff when filed should not be changed by the filing of a supplement.

Title page
to show:—

C.R.C. num-
ber and
cancellation.

29. The title page of every freight tariff shall show,—

- (a) C.R.C. number of tariff in bold type in prominent position in upper margin, and immediately thereunder, in smaller type, the C.R.C. number or numbers of tariffs and supplements cancelled thereby. If, however, the number of cancelled tariffs is so large as to render it impracticable to thus enter them on title page, they may be shown on the following page, but specific reference to such list must be entered on title page in connection with the number of the tariff. Railways may place the railway number of the tariff in any place suitable to them. Separate serial numbers will be used for freight and passenger tariffs.

Names of
carriers.

- (b) Name of the issuing or initial carrier, carriers, or agent, and immediately thereunder the name of other participating carriers. If the list of participating carriers exceeds ten in number or it is inconvenient to show the names on the title page, they may be shown elsewhere in the tariff, provided a note on the title page gives reference to the page on which such list will be found.

Reason
for issue.

- (c) Reason for issue of schedule, thus "Advance", "Reduction", "New Rate", "No Change in Rates", etc.

Kind of
tariff.

- (d) Whether tariff is standard, special (local or joint), or competitive (local or joint).

Territory.

- (e) The traffic and the territory or points from and to which the tariff applies, briefly stated.

Classification
governing.

- (f) Reference by name of the Classification governing the tariff or exceptions, if any.

Dates.

- (g) Date of issue and date effective.

Names of
proper officers.

- (h) Name, title and address of the officer authorized by by-law to prepare and issue tariffs of tolls.

Contents of
tariff:—

30. Tariffs shall contain:—

- (a) An alphabetically arranged and complete index of all commodities upon which commodity rates are shown.

Index to
commodities.

If the tariff contains so small a volume of matter that its title page or its interior arrangement plainly discloses its contents the table of contents may be omitted.

All of the items relating to different kinds or species of the same commodity will be grouped together. For example, all items of coal should be under "Coal", and descriptive word or words to follow, as 'Coal'—'Anthracite'; 'Coal'—'Bituminous', etc.

- (b) Alphabetically arranged and complete index of stations from which the tariff applies, and alphabetically arranged and complete index of stations to which the tariff applies. If the list contains stations in different provinces or states, the name of the province or state must be shown with the name of station. Station index.

Traffic territorial or group descriptions may be used to designate points to or from which rates named in the tariff apply, provided a complete list of such points arranged by traffic territory or group is printed in the tariff, or specific reference is given to the C.R.C. number of the issue that contains such list.

In this list the stations in each territorial group or description shall be arranged alphabetically, and the name or names of road upon which stations are located will be shown; or all of the stations in traffic territory or groups named in the tariff may be included in one alphabetical index, provided that the name or names of the road upon which stations are located and the traffic territorial or group description in which they belong are shown opposite the several stations.

- (c) Explanation of reference mark or technical abbreviations used in the tariff, which should, if possible, be shown at the foot of the page in which such marks appear. If not so shown, reference must be given to the page in which the explanation is published. Explanation of reference marks.
- (d) Such explanatory statement in clear and explicit terms regarding the rates and rules contained in the tariff as may be necessary to remove all doubt as to their proper application. Explanatory statements.
- (e) Rules and regulations which govern the tariff. Under this head, all of the rules, regulations, or conditions which in any way affect the rates named in the tariff shall be entered, except that a special rule applying to a particular rate shall be shown in connection with and on the same page with such rate, or particular reference made thereto in the station index. Rules governing tariff.
- (f) No rule or regulation shall be included which, in any way, or in any terms, authorizes substituting for any rate named in the tariff, a rate found in any other tariff or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule and regulation is a part. No rule authorizing substitution.
- (g) The rates explicitly stated, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated manner of arrangement or ambiguous terms must be avoided. Simple arrangement.
- (h) The different routes via which tariff applies, together with appropriate reference to application of rates. Routes.
- (i) The term 'Common points' shall not be used in any tariff for the purpose of indicating the points from or to which rates named therein apply, unless a full list of such points is printed in the tariff, or specific reference is given to the C.R.C. number of the issue that contains such list. Common points.

No general terms to cover commodities unless list published.

- (j) The terms 'Grain Products,' 'Forest Products,' or similar terms must not be used in any tariff for the purpose of indicating the articles to which the rates apply, unless a full list of the articles intended to be included in, and covered by such terms, is printed in the tariff, or specific reference is given to the C.R.C. number of issue that contains such list.

Conflicting tariffs or supplements to be amended.

31. If a tariff or supplement to a tariff is issued, which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby cancelled in full, it shall specifically state the portions of such other tariffs which are thereby cancelled, and such other tariffs shall at once be correspondingly amended in the regular way. It will not be necessary to give on commodity tariffs or supplements, reference to class-rate tariffs that may be affected, nor to give on class-rate tariffs or supplements, reference to commodity tariffs.

Cancellation of tariffs.

32. When a tariff or rate is cancelled, the cancellation notice must show where the rate or rates will be found, or what rate or rates will thereafter apply.

If a tariff or any portion thereof is cancelled with the purpose of applying in lieu thereof the rates shown in some other tariff, the cancellation notice shall make specific reference to the C.R.C. number of the tariff in which such rates will thereafter be found. Cancellation of a tariff also cancels all supplements to such tariff, if any in effect. If a tariff is cancelled by the issuance of a similar tariff to take its place, cancellation notice should not be given by supplement, but by notice printed in the new tariff.

A tariff may only be cancelled by a supplement to that tariff or by a new tariff. Cancellation of one tariff by a supplement to another tariff will not be accepted.

Supplements to a tariff shall be numbered consecutively.

Consolidating supplements.

33. A consolidating supplement which brings forward reissued items, without change, from a former supplement, must bear the notation:—

“Effective... ..except as noted in individual items.”

Reissued items brought forward without change, must show in a conspicuous form and convenient manner the following:—

“Reissued (in black type): effective (date on which item became effective) in Supplement No... ..”

or where necessary reissued items may be indicated by symbol and explanatory note.

If any of the items have not become effective on the date of issue of the consolidating supplement, the appropriate symbol “A” or “R” must also be shown.

Each supplement subsequent to the first supplement to a tariff shall show on the title page thereof the numbers of the supplements which are in effect.

Number of effective supplements.

34. A tariff of less than three pages can have no supplement except for the purpose of cancellation, and the following note shall be printed in the upper margin of such tariffs: “No supplement will

be issued to this tariff except for purpose of cancellation." Larger tariffs may have the following effective supplements:—

- Tariffs of 3 to 8 pages, one supplement.
- Over 8 to 48 pages, two supplements.
- Over 48 pages, three supplements.

Changes in tariffs issued in loose leaf form must be made by reprinting both pages of the leaf to be substituted. If no change is made in one of the pages, the words "No Change" must be printed thereon. Such pages must be designated as: "First revised page. . . .", "Second revised page. . . .", etc., must show the C.R.C. number of the tariff, the issued and effective dates, and the name and title of the proper officer.

35. An amended item or rule must be printed in supplement in its entirety, except that in large items or rules which have the paragraphs lettered or numbered, the changed paragraph only need be published, provided proper reference is shown to such number or letter. Amended item or rule to be reprinted.
Exception.

36. A tariff or supplement having once been cancelled cannot be restored. If it is desired to reinstate rates previously abrogated, they must be covered by an entirely new schedule. Cancelled tariff cannot be restored.

37. Unless shown in individual tariffs effected thereby, each carrier shall publish, with proper C.R.C. numbers, and file separate tariffs which shall contain in clear, plain and specific form and terms, all the terminal charges, such as arbitraries, switching, icing, storage, elevation, etc., together with all other charges and rules which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment. Tariff of terminal charges.

Where the terminal charges as herein described are published in separate tariffs, reference thereto must be made in individual tariffs containing rates affected thereby.

38. Section 329, subsection 3, of the Railway Act, in connection with special tariffs, provides that greater tolls shall not be charged therein for a shorter distance than for a longer distance over the same line, in the same direction, if such shorter distance is included in the longer distance. Tariffs issued between specific points in Canada containing rates which are not competitive under section 329, subsection 4, shall contain the following clause:— Long and short haul clause.

"The rates named herein unless specifically indicated are maximum rates and must not be exceeded in the same direction from or to any intermediate points in the direct line of transit."

Tariffs naming freight rates from points in the United States to points in Canada or from points in Canada to points in the United States shall contain a rule to the effect that said rates, unless specifically indicated as being competitive, will apply as maxima to or from intermediate points in *Canada*.

39. Tariffs containing rail-and-water rates applicable via routes upon which it is necessary to close navigation during a portion of the year, and which do not become effective and expire by specified expiration within the same season of navigation, may provide for suspension and restoration of the rail-and-water rates named therein under the following regulations:— Suspension and restoration of rail-and-lake rates.

(a) The following notation shall appear on the title page of the tariff:—

The rates named herein for rail-and-water transportation are subject to suspension at the close of navigation and restoration on the opening of navigation on notice as provided on page. . . of this tariff.

(b) The rules referred to on title page shall provide that the closing and opening of navigation will be announced by supplement, also that shipments reaching the port of transshipment too late to be forwarded by vessel, or in excess of vessel capacity, will be subject to tariff rates via all-rail route in effect on the date of shipment from point of origin.

Such supplements announcing suspension and restoration of rail-and-water rates may be made effective on three days' notice, shall contain no other matter, and will not be counted against the number of supplements permitted by rule 34.

Power of
Attorney for
agents issuing
classifications.

40. Under Order No. 4277, the Chairman of the Official, Western and Southern Classification Committees were authorized to file with the Board copies of the Classification and supplements thereto, on behalf of the railway companies which file with the Board international freight tariffs subject to these Classifications. Every such railway company must authorize by power of attorney, Chairman of the Official, Western and Southern Classification Committees, to file with the Board such Classifications and supplements. Powers of attorney in the following form must be filed with the Board in duplicate when the duplicate copy will be stamped and returned as a receipt:—

KNOW ALL MEN BY THESE PRESENTS:

That the (name of carrier) has made, constituted, and appointed, and by these presents does make, constitute and appoint (name of person appointed) its true and lawful attorney and agent for the said company, and in its name, place and stead to file with the Board of Railway Commissioners for Canada the (Official, Western or Southern, as the case may be) Classification and supplements thereto, as required by Section 322 of The Railway Act, and by regulations established by the Interstate Commerce Commission under the Act to Regulate Commerce, for the period of time and the territory now herein named:

And the said (name of carrier) does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof, and assuming full responsibility for the facts and neglects of its said attorney, and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its. President, and to be duly attested under its corporate seal by its Secretary, at. in the State of. on this. day of. in the year of Our Lord nineteen hundred and.

The.
(Name of Carrier)

By.
(Its. President)

Attest

.
Secretary.

(Corporate Seal)

41. Railways subject to the jurisdiction of the Board or properly authorized Agents of such railways shall file in triplicate with each separate tariff or supplement which changes rates or regulations, a statement (suggested from appendix "B") giving the following information:—

Advice of
freight rate
changes.

- (a) The C.R.C. number of the tariff or supplement number thereto;
- (b) The effective date;
- (c) The commodity affected (if published under an item number, proper reference thereto to be given);
- (d) The points from, to or between which the rates apply;
- (e) Present and proposed rates in cents;
- (f) A concise statement of reasons for the change, which shall be sufficiently explicit to enable the Board to arrive at an intelligent understanding thereof.

If changes are made in regularly scaled class tariffs, a statement of the increase or decrease in the first-class rate will be sufficient.

If there is a general revision of class rates, such as those resulting from consolidation of railways, shortening of lines, new routes, etc., a general statement will be sufficient.

These statements (size 8 x 11 inches) should be headed "Freight Rate Changes", and be numbered consecutively in the upper right hand corner.

PASSENGER TARIFFS

42. In order to avoid the necessity, when actual working tariffs are filed as standard tariffs, of having any and all changes approved by the Board and subsequently published in *The Canada Gazette*, it is suggested that the maximum basis of rate per mile be filed with the Commission as the standard tariff under a C.R.C. number, and the working tariffs filed as special tariffs.

Standard
passenger
tariffs.

43. It is not necessary to file joint passenger tariffs issued by foreign carriers not having lines in Canada.

Filing joint
tariffs by
foreign
carriers.

44. If conductors' passenger tariffs are printed which cover the same fares that are in an agent's tariff for the same territory, either with or without ten cents added, they need not be filed, provided the agent's tariff containing the fares has been filed.

Conductor's
tariff.

45. Tariffs for transportation of milk by passenger trains shall be designated "Special Tariff for Milk by Passenger Trains."

Milk tariffs.

46. Sleeping and parlour car tolls shall be published in a separate tariff and filed under a separate series of C.R.C. numbers with the prefix "S."

Sleeping and
Parlour Car
tariffs.

47. Railways are occasionally offered excursion or other special passenger traffic which, if accepted, must be moved immediately or on less than three days' notice required by the Railway Act, for filing the necessary specific tariffs.

Emergency,
excursion
or other
passenger
traffic.

In order to facilitate the movement of such traffic, the railways are permitted to make application by telegraph or telephone to the Chief Traffic Officer for permission to file such tariffs on less than statutory notice.

Railways which file schedules showing fixed fares for excursions, conventions, etc., to be charged upon notice, may for excursions, conventions, etc., limited to not more than ten days from first selling

date to final return limit, act immediately upon notice, under C.R.C. number, being filed at the stations from which tickets are to be sold, provided copy of such notice is at the same time mailed to the Chief Traffic Officer of the Board.

48. The title page of every passenger tariff shall show:—

(a) C.R.C. number of tariff in bold type in prominent position in upper margin, and immediately thereunder, in smaller type, the C.R.C. number or numbers of tariffs and supplements cancelled thereby. If, however, the number of cancelled tariffs is so large as to render it impracticable to thus enter them, they may be shown on the following page, but specific reference to such list must be entered on title page in connection with the number of the tariff. Railways may place the railway number of the tariff in any place suitable to them. Separate serial C.R.C. numbers will be used for freight and passenger tariffs.

(b) Name of issuing or initial carrier, carriers, or agent, and immediately thereunder the names of other participating carriers.

NOTE.—On International Joint Tariffs, it will be sufficient to show the names of the Canadian carriers, and directly under, the words: 'And connecting lines in the United States.'

(c) Reason for issue of schedule, thus 'Advance,' 'Reduction,' 'New fares,' 'No Change in fares,' etc.

(d) Whether tariff is Standard, Special (local or joint), or competitive (local or joint).

(e) The territory or points from and to which the tariff applies, briefly stated.

(f) Date of issue and date effective. Also date of limitation if any.

(g) Name, title, and address of officer authorized by by-law to prepare and issue tariffs of tolls.

49. Tariffs shall contain, in the order named:—

(a) Table of contents, full and complete.

(b) Alphabetically arranged and complete index of stations from which the tariff applies, and alphabetically arranged and complete index of stations to which the tariff applies. If the lists contain stations in different provinces or states, the name of the province or state must be shown with name of station. If the number of originating and destination points be not too large, they may be shown on title page of tariff. Traffic territorial or group descriptions may be used to designate points to or from which fares named in the tariff apply, provided a complete list of such points, arranged by traffic territories or groups, is printed in the tariff or specific reference is given to the C.R.C. number of the issue that contains such list. In this list, the stations on each line of road shall be grouped together alphabetically and under the name of the road. If, in naming fares in the tariff, points of origin and of destination are arranged alphabetically, or alphabetically by provinces or roads, alphabetical index of stations may be omitted.

(c) Explanation of reference marks and technical abbreviations used in the tariff.

(d) Routing under the tariff. If the fares apply via more than one route or gateway, the route or gateway shall be shown in connection with the fare, or the different routes shall be specified and each

Title page
to show:—

C.R.C.
number and
cancellations.

Names of
carriers.

Reason
for issue.

Kind of
tariff.

Territory.

Issue and
effective dates.

Name of
proper officer.

Tariff shall
contain:—

Table of
contents.

Station
index.

Explanation
of marks.

Routing.

route be given a number, in which event the routing to each point or destination named in the tariff will be shown by placing opposite thereto, in a column headed 'Route,' the proper route number or numbers.

(e) Such explanatory statement in clear and explicit terms regarding the fares and rules contained in the tariff, as may be necessary to remove all doubt as to their proper application. Explanatory statements.

(f) Rules and regulations which govern the tariff. Under this head, all of the rules, regulations, or conditions which, in any way affect the fares named in the tariff, shall be entered, except that a special rule applying to a particular fare shall be shown in connection with, and on the same page with such fare. Rules governing tariff.

(g) No rule or regulation shall be included which in any way or in any terms authorizes substituting for any fare named in the tariff a fare found in any other tariff, or made up on any combination or plan other than that clearly stated in specific terms in the tariff, of which the rule or regulation is a part, unless reference is made by C.R.C. number to such other tariff. These rules shall include the rules governing stop-over privileges and the general baggage regulations, and also schedules of excess baggage rates, unless such excess baggage rates are shown in tariff in connection with the fares, or are published in separate tariffs, and referred to under C.R.C. number as filed. No rule authorizing substitution.

(h) The fares, explicitly stated, together with the names of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated or ambiguous plans or terms must be avoided. Fares and points.

50. Tariffs naming fares for excursions may state such fares in such terms as "One first-class fare for the round-trip," "One first-class fare and a third for the round-trip," "One first-class fare plus . . . cents for the round-trip." Terms for excursion fares.

51. In naming fares in local passenger tariffs, points will be arranged geographically, and the points on main line shall appear first in order, followed by points on branch lines diverging from main line and other branch line points by a rule. Points shown at the top of column of fares will be known as "head-line points," and each column will be designated by a letter or number, or, if necessary, by a combination of two letters. Points shown at the side of the columns of fares will be known as "side-line points," and will be numbered consecutively. The alphabetical index of stations provided for will show the location of fares to or from each station by head-line letters or numbers and side-line numbers. Head line and side line points.

52. A carrier may apply through ticket fares to or from stations, to or from which no joint fare is published, by using lawfully published basis, locals or proportionals in connection with other lawfully published tariffs. Tariffs containing basing fares must specify clearly the extent and manner of their use, and tariffs that are specially intended for use in connection with published basing fares must show the C.R.C. number of tariffs in which bases can be found. Basing and proportional fares.

53. The term "Common points" shall not be used in any tariff for the purpose of indicating the points from or to which fares named therein apply, unless a full list of such points is printed in the tariff, or specific reference is given to the C.R.C. number of the issue that contains such list. Term Common Points not to be used unless list published.

Cancellation of
conflicting
tariffs or fares.

54. If a tariff or supplement to a tariff is issued which conflicts with a part of any other tariff or supplement to a tariff which is in force at the time, and which is not thereby cancelled in full, it shall specifically state the portions of such other tariffs which are thereby cancelled, and such other tariffs shall at once be correspondingly amended in the regular way.

Cancellation
notice to
show where
fare will
thereafter
be found.

55. If a tariff is cancelled with the purpose of applying in lieu thereof the fares shown in some other tariff, the cancellation notice shall make specific reference to the C.R.C. number of tariff in which such fares will thereafter be found. Cancellation of a tariff also cancels supplements to such tariff, if any in effect. If a tariff is cancelled by the issuance of a similar tariff to take its place, cancellation notice should not be given by supplement, but by notice printed in a new tariff.

Consecutive
numbering of
supplements—
number
in effect.

56. Supplements to a tariff shall be numbered consecutively, and there shall be in effect at no time more than two supplements to any tariff.

Cancelled
tariff cannot
be restored.

57. A tariff or supplement having once been cancelled cannot be restored. If it is desired to reinstate fares previously abrogated, they must be covered by an entirely new schedule.

A. D. CARTWRIGHT,
Secretary.

APPENDIX "A"

.....
 (Name of Railway)

TRAFFIC DEPARTMENT

.....192...

(Place and date)

Advice No.....

The Chief Traffic Officer,
 Railway Commission for Canada,
 Ottawa, Canada.

Dear Sir,—In compliance with the requirements of the Railway Act, I
 transmit herewith, for filing with the Commission, copies of tariffs as follows:—

Supplement Number	Tariff C.R.C. Number	Date Taking effect	Description

.....
 (Name)

.....
 (Title)

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Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Railway Association of Canada, for certain amendments to Rules 93 and 99 of the General Train and Interlocking Rules, in order to provide for the method of operation now employed by certain of its member railways, under so-called Special Instruction "E".

File 4135.26.

Heard at Ottawa, Ontario, June 15 and 16, 1921.

JUDGMENT

COMMISSIONER BOYCE:

By General Order of the Board, No. 322, dated December 10, 1920, the railway companies concerned were required, on and after June 1, 1921, to withdraw from their respective working time-tables, Special Instruction "E", and thereafter observe the Uniform Code of Rules for Canadian Railways, approved by the General Order of the Board, No. 42, dated July 12, 1909. This General Order, No. 322, was based upon the judgment of the Board, dated November 26, 1920, upon the complaint of the Brotherhood of Locomotive Firemen and Enginemen, reported 26 C.R.C. p. 321, and in Board's Orders and Judgments, volume X, p. 442.

Prior to the date (June 1, 1921) on which General Order No. 322 was to become effective, the Canadian Railway Association, on April 6, 1921, in view of the judgment of the Board just referred to, applied for approval by the Board of certain changes in the General Train and Interlocking Rules in such application set forth, and, pending the hearing and decision of their application, applied for an extension of the time limited as above to June 1, 1921, and by General Order No. 340, dated May 19, 1921, the time within which the changes required to be made under General Order No. 322 was extended until 15th day of June, 1921. The application of the Railway Association was heard by the Board on June 15, 1921, and judgment thereon was reserved, and, pending the decision of the Board thereon, the enforcement of General Order No. 322 was further extended until September 1, 1921, or until further order of the Board. No further order of the Board having been made, the operation of General Order No. 322 remained suspended, and it follows that Special Instruction "E" thereby ordered to be withdrawn from operation, remains in force on the railways using that method of operation.

Since the hearing of this application, as stated, there have been meetings and conferences, and much correspondence between the parties concerned, and officers of the Board, with a view to possible adjustment of the dispute, but as nothing has resulted in the shape of an agreement, and the Board has been so advised, the matter must be disposed of by the Board upon what submissions are before it, and considerations arising thereout and incident thereto. The delay in disposition by the Board is attributable, to such proceedings, and has allowed further scrutiny of the method involved.

Special Instruction "E", which first appeared in the time-tables of the Canadian Pacific Railway Company, on June 27, 1907, and later by the Canadian National Railways, reads as follows:—

"The outer main track switches of passing tracks will be considered 'station limits' and main track may be used inside of such limits by keeping clear of first and second class trains. All trains, except first and second class trains must, unless otherwise directed, approach and pass through such limits, prepared to stop, unless the main track is seen to be clear. Trains occupying or using the main track outside the station limits must be protected, unless train orders or schedule confer the right to use main track. During foggy, smoky, or stormy weather, protection as per rule 99 must, in addition, be maintained to insure absolute safety".

Under the system of operation provided by it the trains of the railway using that system have been operated for many years, and are now being operated, and its practical working is referred to in the judgment of the Board dealing with its validity; p. 330, 26, C.R.C. in the following language:—

"The Special Instruction 'E' complained of has been in force, and the railway has been operated under it for a great many years, and the submissions indicate that though open to strenuous objection by a part, at least, of the employees of the railway operating under it, it has been, it is said, operated with success and is still in general use throughout the entire system."

I listened carefully to all the evidence and arguments at the hearing of both cases before this Board dealing with this method of operation, and I came to the conclusion upon these submissions that from a point of view of public safety, the method of operation prescribed by Special Instruction "E" was not seriously assailed. It seemed to me that the issue was principally as between the engine-men and firemen on the one hand, and the conductors and trainmen on the other, as to their respective duties and responsibilities as employees of the railway company for the due protection of the train under given conditions and under particular circumstances. True it is that in emphasizing their respective arguments, the representatives of each of these bodies, argued that a system of operation, consistent with their views, would enure to the safety of the public, and would, respectively, be a safer method of operating the trains of the company, and, in the course of very able and exhaustive arguments from both these bodies of employees, references were made to accidents alleged to have resulted from the use of one or the other method of operation referred to, but these suggestions were largely met by the railway company, and during the many years in which this dispute has been pending before this Board, and while the methods of operation contained in Special Instruction "E" have been in force by the railway companies carrying Instruction "E" and have been under critical scrutiny and observation by both contending parties, the railway companies and this Board, results have not indicated that the operation is an unsafe one per se, so as to justify this Board, in my opinion, in interfering with it by declaring it to be not conducive to due protection of property, the safety of the public, or of the employees of the railway companies concerned.

The issue before us, therefore, being one between the bodies of employees of those railways opposing on the one hand and supporting on the other a method of running railway trains introduced, and for many years maintained by the railway companies using that method, and now in force, I am unable to see that the general jurisdiction of the Board as to safety in the management of the railway and in the running of its trains is properly invoked.

The judgment of the Board, November 26, 1920, upon which issued General Order No. 322, dated December 10, 1920, requiring the withdrawal by the railway companies concerned, of Special Instruction "E", proceeded upon the ground, not of substance, or of the instability or unsafety of the method of operation involved in the Special Instruction, but because the method prescribed in that Special Instruction was a regulation, and because, as a regulation, it had not been promulgated, and approved as required by the Railway Act, and was not a regulation valid in law:

Fralick v G.T.R. 43 S.C.R. 494

There are, under the Railway Act, two proceedings prescribed under which regulations may be made with reference to the methods to be employed by railway companies in the running and operating of their trains, and as these have been brought in question, both upon the original application and this application, a short reference to them may serve to clarify the situation and show the distinction. They are as follows:—

1. Under section 287—and cognate sections—there is a general power vested in this Board to make orders and regulations, all in the interest of and to insure public safety, the due protection of property, and of the employees of the company, and section (g) of persons travelling on His Majesty's service. Under section 288 the Board is required "to provide for uniformity of rules for the operation and running of trains."

2. Under section 290, the railway companies may, subject to what provisions and restrictions are contained in the Railway Act, or the Special Act, and "subject to any orders or regulations of the Board made under sections 287 and 288", make by-laws or regulations concerning, inter alia;—

(a) the mode by which, and the speed at which any rolling stock used on the railway is to be moved;

(f) the travelling upon, or the using or working of the railway;

(g) the employment and conduct of the officers and employees of the company, and

(h) the due management of the affairs of the company.

Such by-laws as may be passed, under section 290, except in so far as they relate to tolls and such as "are of a private or domestic nature" must be passed by the company, in the manner prescribed and, upon report of the Board, must receive the assent of the Governor in Council, under the procedure specified in section 292, 293, 294, 295, 296, and 297 of the Railway Act.

The intent of these two sections—287 and 290—is, I think, obvious. Under the latter section the subjects mentioned and quoted—(a), (f), (g) and (h), (which clearly include what is provided for in Special Instruction "E"), are left to the judgment and responsibility of the railway company as methods of operating, managing and protecting its property and carrying on its business, but, in order to preserve control, in the interest of the public and the employees of the railway, wherever and howsoever any regulation of the railway company passed under Section 290 comes in conflict with the interests of the safety, convenience, etc., of the public, or the employees, the power clearly vested in the company, under that Section, to manage its own business is circumscribed and controlled by (a) the right of the Board to interfere, and regulate, under section

287 and 288. In cases where, in its judgment, such interference and regulation is necessary to safeguard such interests as are specified in Section 287, as the justification therefor; and (b) the prescribed method of passage of by-laws of the company; the submission of same for the approval of the Governor in Council, upon a report of this Board, under sections 292 *et seq.*

In the light of the analysis of the scope and meaning of the sections above referred to it seems to me that it is not a function of this Board, in the discharge of its duties in the administration of the Railway Act, to interfere with, or direct, the running of the company's trains or the management of its business, except under the powers, and for the reasons, prescribed in sections 287 and 288. So long as the railway company runs and operates its trains under regulations passed and approved under sections 290 *et seq.*, the Board does not, and I think should not, interfere. The responsibility for the safe operation of the railway is upon the railway company whose system of general operation is safeguarded by the procedure required to be followed under sections 290 *et seq.* The Board will scrutinize any by-laws, submitted for the approval of the Governor in Council, under those sections, when reporting upon them under section 293 (2), and will not recommend for approval of the executive any by-law submitted which, in its opinion is not in conformity with safe and convenient operation, and while it possesses, in reserve, the general powers under sections 287 and 288, for the safe-guarding of the interests, or for the purposes mentioned therein it does not, as I take it, employ those powers unless it is clearly apparent that what system the railway company has put into force, under sections 290 *et seq.*, justify the exercise of such powers for the purposes in sections 287 and 288 specified.

The above seems to be the position upon the present application. Special Instruction "E," for the reasons mentioned, has been ordered to be withdrawn, because it is a regulation of the company and must be made to conform to the requirements of sections 290 *et seq.* to insure its legality. It is still in force, but the applicants, the Railway Association of Canada, now ask that the Board amend the General Train and Interlocking Rules in a manner which will permit of such an operation as is now carried on by some railways under Special Instruction "E." The application to this Board, now under consideration, dated April 6, 1921, is as follows:—

"In view of the opinion expressed in the judgment of the Board, dated November 26, 1920, in the matter of the complaint of the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen, with regard to Special Instruction "E," Canadian Pacific Railway Time-table, covering Station Limits—Board file No. 4135.26—this association has had under consideration the changes that will be necessary to make in the General Train and Interlocking Rules in order to provide for the method of operation now followed by certain of its members railways as outlined in the Special Instruction above referred to, and is of the opinion that the best practical way in which to accomplish the desired object is to provide for the erection of station limit boards at points where this method of protection is found desirable.

"To give effect to this plan, and to remove any possible uncertainty, the following amendments should be made in the said rules:—

"1. Rule 93 should be amended to read as follows:—

"93. Within yards defined by yard limit boards, and within station limits defined by station limit boards, the main track may be used, keeping clear of first and second-class trains.

"The main track must not be so used within yard limits and station limits until it is known that all sections of overdue first and second-class trains have arrived.

"All trains, except first and second-class trains, must, unless otherwise directed, approach and pass through yard limits and station limits prepared to stop, unless the main track is seen or known to be clear.

"Yellow lights must be attached to yard limit boards and to station limit boards, to be kept lighted from sunset to sunrise. During foggy, smoky, or stormy weather, protection as per rule 99 must in addition be maintained to ensure absolute safety within station limits.

"By night, or in foggy weather or stormy weather, proper lights must be placed on cars or engines obstructing the main track within yard limits or station limits."

"2. The following definition of station limits should be inserted in the 'Definitions' contained in the said rules":—

"*Station Limits.*—Portion of the main track defined by station limit boards."

"3. The first paragraph of rule 99 should be amended to read as follows:—

"99. Except as provided in rules 93 and 552 and train Order Form 'U' when a train stops, or is delayed on the main track, under circumstances in which it may be overtaken by another train, the flagman must go back immediately with stop signals a sufficient distance from the train to insure full protection, at least

"Accordingly it is respectfully requested that the Board grant its approval of the foregoing amendments at as early a date as possible in order that they may be duly adopted by the railway companies and made part of the General Train and Interlocking Rules before June 1, 1921."

The Board is asked, by this application, to make an Order approving the proposed amendments to the General Train and Interlocking Rules, which it is represented, will provide for and authorize the method of operation at present in use under Special Instruction "E." The General Train and Interlocking Rules sought to be amended have been approved by the Governor in Council, under sections 291, 292, 293, and 294, of the Railway Act.

I am not prepared to agree that the amendments suggested in the application above quoted would continue the present operation specified in the Special Instruction "E," and, holding as I do, that such method of operation which has been in force for so many years is not such as to warrant any interference with it by the Board in the exercise of its general jurisdiction, under section 287, I do not think that the Board is concerned as regards the necessity for amendment of the General Train and Interlocking Rules. The responsibility is upon the railway companies using the method of operation in Special Instruction "E." The suspension of that method by General Order No. 322 was for the specific reason that it being a regulation the requirements of the Railway Act to make it such had not been observed and it, therefore, had no legal effect as an operating regulation. But, the operation introduced by the railways concerned, has continued during many years, is well known by the employees, and, for all that appears to the contrary, is a safe and proper method of operating trains. The Board finds no such defects in its application as warrant it, upon what is before it, in deciding that any other method would be more desirable in the interests of the safety of the public, or the employees of the railway. Therefore, that method, used by the railways, is not in question, but that method, being a regulation, must conform to the statute. That appears to be all that is

here involved, and no amendments of the General Train and Interlocking Rules seems to be necessary to put into legal form a method of operation not now in legal form.

If, therefore, railway companies using this method of operation desire to continue it, they must proceed under sections 290 *et seq*, putting the regulation involved into proper form as prescribed by section 292, and submit for approval as required by section 293.

To allow sufficient time for the regulation to be legalized in due form, the suspension by General Order No. 343 of the effective date of General Order No. 320 directing the withdrawal of Special Instruction "E" continues for three months from May 1 next, after which time the practice of carrying this method of operation in the time-tables of railways as a "Special Instruction" will be withdrawn. In the interval, all railways now carrying such Special Instruction in their time-tables must procure legalization of it as a regulation in conformity with the statute referred to.

Subject to above, the application is dismissed.

OTTAWA, April 4, 1924.

The Chief Commissioner, Hon. F. B. Carvell, K.C., and the Assistant Chief Commissioner, S. J. McLean, concurred.

Application of the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, for an Order prescribing such Regulations as may be deemed necessary in connection with limiting or regulating the hours of duty of employees engaged in the operation of trains of railway companies subject to the jurisdiction of the Board.

File No. 4376.9.

JUDGMENT

Hon. F. B. CARVELL, K.C., *the Chief Commissioner:*

This case was heard in Ottawa, on June 21, 1922, and as presented to the Board, asks that the Board exercise the powers conferred upon it by section 287 of the Railway Act, subsection 1, subclause (f), and limit the hours during which employees engaged in the operations of trains may remain on duty.

At the hearing, Mr. Best stated that, while the application was general, he represented only the Brotherhood of Locomotive Firemen and Enginemen. After considerable discussion, he finally admitted the impracticability of the regulation of engineers and firemen without involving all of the other operating men, and at page 5186 stated, as follows:—

"I think I have the right to say this before I sit down, that while we are asking for this regulation on behalf of the engineers and firemen, in my judgment it is not practicable to have a regulation that would not involve and would not affect all the men concerned in the operation of trains."

We, therefore, have to consider whether or not the Board should exercise the powers granted it by Parliament, and prescribe regulations by which railway employees engaged in the operation of trains can only work a certain number of hours continuously.

The application, evidently, is based very largely upon the Hours of Service Law of the United States, where, as I understand it, no employee engaged in the operation of trains shall be allowed to work more than sixteen hours continuously.

Mr. Best was supported by Mr. Baker, along with Mr. Kennedy and Mr. Dewar, representatives of the Locomotive Engineers; and was opposed by the representatives of the railway companies, and also Mr. S. N. Berry for the Order of Railway Conductors; Mr. Babe for the Brotherhood of Railway Trainmen; Mr. Maloney for the Grand Trunk Railway Trainmen; Mr. Barker for the Order of Railway Conductors, Canadian National Railways, Western Lines; and Mr. MacDonell for the Order of Railway Conductors, Canadian National Railways, Eastern Lines.

Without going into a long examination of the evidence, generally speaking, the railway companies contended that the present rules under which employees may book rest, after a certain number of hours of service, amply provided for the protection of both employees and the public, because it is largely in the hands of the employee himself to state whether or not he requires rest.

Many cases were pointed out as to the difficulties in the operation of the positive Hours of Service Law, because when the limitation of time arrives the train must be tied up, even if it were not more than a few miles from the terminal.

The representatives of the conductors and trainmen all protested against the application, on the ground that it was not necessary; that the privilege of booking rest amply protected; and, generally, that it would necessitate very serious changes in the social relations of the employees represented.

It was pointed out that in some cases conductors and trainmen took long runs, after which they had long rests, which enabled them to live in large centres and enjoy better social and educational privileges for themselves and families; and I can quite readily understand the difference of viewpoint between engineers and firemen, on the one hand, and conductors and trainmen, on the other; but with the privilege of booking rest now open to any employee, and with the strenuous opposition of more than two-thirds of the railway employees in Canada to this application, I am of the opinion that the Board would not be justified in granting the same, and think the application should be refused.

OTTAWA, April 4, 1924.

Assistant Chief Commissioner McLean, Deputy Chief Commissioner Nantel and Commissioner Boyce concurred.

Re General Order of the Board No. 94, dated July 24, 1912, prescribing "Uniform Rules Governing the Determination of Visual Acuity, Color Perception and Hearing of Railway of Employees."

File No. 1750.17.

Mr. T. J. Coughlin, Dominion Representative, and Mr. W. J. Babe, Vice-president, Brotherhood of Railroad Trainmen, requested the Board on the 6th of June, 1923, to make "A regulation to apply to the men who were demoted and working in positions in Class 'C' who were formerly in Class 'D' and passed their re-examinations in that class, but owing to reduction in staff were working in positions covered by Class 'C' when the examiner made his bi-annual examination."

The applicants asked, "without in any way changing the standards set out in General Order 94, is it possible to so interpret the order that, once an employee is promoted to a position covered by Class 'D,' the only re-examination he will have to take will be that for re-examination of Class 'D' even though he may be later on demoted to a position covered by Class 'C'?"

The application was taken up with the Railway Association of Canada, and after some correspondence the parties concerned were informed by letter, dated April 8, 1924, of the Board's ruling as follows:—

RULING

Referring to the question raised in letter of the Brotherhood of Railroad Trainmen, dated June 6, 1923, by Messrs. T. J. Coughlin, Dominion Legislative Representative of the Brotherhood, and W. J. Babe, Vice-president, concerning the determining of visual acuity, colour perception and hearing of railway employees, I am directed to inform you that the following is the interpretation thereon placed by the Board, namely,—“An employee that has passed the entrance to service examination and given actual service under any of the sub-headings of Class ‘C’ and passed into Class ‘D’ in the regular course of promotion, and afterwards reverts to Class ‘C’ by direction, or consent of the company, shall be considered satisfactory if the standards of the re-examination Class ‘D’ are reached and maintained.”

OTTAWA, April 8, 1924.

CIRCULAR NO. 205

Re Duties of Railway Companies as to Fencing.

File No. 27920.1.

APRIL 15, 1924.

Numerous complaints are being made to the Board as to inefficient fencing by railway companies along their right of way, and it appears to the Board that, in many cases, these complaints are being viewed from the wrong standpoint.

For many years prior to 1911, the Railway Act contained a provision that, in some cases, fencing was not required unless specifically so ordered by the Board. This is found in the Railway Act, 1906, Section 254, sub-section (4), which reads as follows:—

“254. (4) Whenever the railway passes through any locality in which the lands on either side of the railway are not inclosed and either settled or improved, the company shall not be required to erect and maintain such fences, gates and cattle-guards unless the Board otherwise orders or directs.”

By Cap. 22 of the Acts of 1911, Section 9, subsection (4) of Section 254 was repealed, and the following enacted in lieu thereof, viz.:—

“4. The Board may, upon application made to it by the Company, relieve the company, temporarily or otherwise from erecting and maintaining such fences, gates and cattle-guards where the railway passes through any locality in which, in the opinion of the Board, such works and structures are unnecessary.”

this is found in the present Railway Act as Section 274, subsection (4).

It will thus be seen that it is the duty of every railway company to fence every portion of its right of way unless specifically relieved from so doing by an Order of the Board.

By Order of the Board,
A. D. CARTWRIGHT,
Secretary.

The Board is in receipt of a letter from the General Secretary of the Railway Association of Canada, of which the following is a copy, which is published for the information of municipal and other interested authorities:—

“The large increase from year to year in highway travel in fast moving motor vehicles makes it increasingly necessary to give more careful thought to the level grade crossing situation. While under present conditions in this country the grade crossing is inevitable, by the practice of foresight many such crossings can be avoided in the future and those necessary to be established made reasonably safe for highway traffic, excluding the reckless driver who disregards all precautions taken for his safety and has no consideration for the safety of others. It is suggested that communities in working out their plans for new streets or roads, or the diversion of old thoroughfares, should recognize the importance of keeping the number of grade crossings down to the minimum by making provision for the greatest practicable consolidation of traffic destined to cross railway tracks, and this without requiring long indirect detours in order to reach the crossings provided; and that in their building restrictions they should provide for the maintenance of a clear view of the tracks in both directions from any point on the street or highway within 100 feet of the crossing.

First. “We feel that adherence to these suggestions will provide safe conditions for highway travellers and the railways at crossings;

Second. Save considerable sums of money to both the municipalities and the railways for maintenance of, and protection at crossings;

Third. Avoid heavy expenditures for damages to abutting property, largely paid by the municipalities concerned, when the grade separation stage is reached, making it possible to bring about this ideal condition at an earlier date.

“As the Board has the power to refuse or permit the crossing of railway tracks by streets or highways, it would be greatly in the interests of the public, including the railways, if the Board should take steps to bring the situation prominently to the attention of municipalities and other interested authorities.

“Yours truly,

“THE RAILWAY ASSOCIATION OF CANADA,

“(Sgd.) C. P. RIDDELL,

“General Secretary.”

Dangerous practices of motorists, drivers of other vehicles, and of pedestrians, at railway crossings.

Files Nos. 45.8.1 and 45.8.2.

In many cases accidents at highway crossings are due to the negligence of those driving cars and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings. The Toronto, Hamilton and Buffalo lines, from November 19, 1923, to March 18, 1924, show 10 cases where there was danger at protected crossings due to the negligence of those using the crossings. The Canadian National Railways lines, from September 29, 1923, to March 25, 1924, show 20 cases.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

CANADIAN NATIONAL RAILWAYS LINES

Date	Time	Street	License No. of Auto	Dangerous Practice
1923				
Sept. 29.....	5.25 p.m....	Weston Road, Toronto	7868.....	Ran under gates while bell was ringing, tearing top of auto and bringing it to stop; in place of backing off track went forward just in front of engine.
Oct. 2.....	9.15 a.m....	King St., Cobourg....	181-316 Ont..	Did not stop when signalled to; crossed just in front of train.
Oct. 3.....	3.45 p.m....	Drouillard Road, Walkerville.	10-672.....	Paid no attention to watchman and was struck; man jumped out and saved himself.
Oct. 5.....		Booth and Britannia Sts., Ottawa.	248-882.....	Passed in front of engine paying no attention to watchman.
Oct. 6.....		Mile 7.4 Beachburg, Ont.	C.7.572.....	Passed in front of train 401 and was struck.
Oct. 12.....	1.00 a.m....	John St., Aylmer.....	134-678.....	Ran into gates, in fog, damaging same.
Oct. 13.....	4.50 p.m....	Queen St., Ottawa....	247-592.....	Ran into gates.
Oct. 20.....	2.30 p.m....	Queen St., Ottawa....	73-202.....	Ran past the watchman at 25 miles per hour.
Oct. 25.....	6.10 p.m....	Langstaff Crossing, Mileage 18.3, Bala Subd.	10-171.....	Ran in front of train. One person died from injuries, two others badly injured.
Nov. 8.....	12 noon.....	East Main St., Ottawa	C.16.893.....	Drove into lowered gates.
Nov. 12.....	2.50 p.m....	King St., Cobourg....	181-541.....	Ignored signal that train was approaching.
Nov. 22.....	1.45 p.m....	Booth St., Ottawa....	80-344 Ont....	Crossed in front of engine, did not heed stop signal.
Nov. 29.....	2.13 p.m....	Booth St., Ottawa....	73-956 Ont....	Crossed in front of engine; did not heed stop signal.
Dec. 4.....	9.04 a.m....	Walton St., Port Hope	174-465.....	Did not heed stop signal, crossed just in front of engine.
Dec. 13.....	6.50 p.m....	Kingston Road, Cobourg.	28-422.....	Passenger train within 10 rods of gate, auto drove round east gate of C.P.R.
Dec. 24.....	10.35 p.m....	Bronson Ave., Ottawa	94-266 Que....	Did not heed stop signal, drove in front of engine.
Dec. 24.....	2.17 p.m....	Booth St., Ottawa....	74-247 Ont....	Crossed in front of engine.
Dec. 31.....	12.10 p.m....	Bowes St., Parry Sound.	C.7.729.....	Drove in front of engine and was struck by buffer beam.
1924				
Jan. 19.....	2.35 p.m....	Booth St., Ottawa....	C-13292 Ont..	Did not heed signals; drove in front of engine.
Mar. 25.....		Cherry St., Toronto..	1-5542 Ont....	Disregarded stop signal; drove over the crossing; was fined \$30.00 in court.

TORONTO, HAMILTON AND BUFFALO LINES

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Jan. 2.....	4.25 p.m...	Barton St., Hamilton	56-490 Ont...	Failed to heed signal; drove in front of engine.
Jan. 4.....	6.05 p.m...	John St., Hamilton...	52-77 Ont.....	Drove into crossing gates and broke same.
Jan. 9.....	2.25 p.m...	Barton, St., Hamilton	27-515 Ont....	Drove past watchman who was displaying stop signal.
Jan. 9.....	2.30 p.m...	Barton St., Hamilton.	12-651 Ont....	Drove past watchman who was displaying stop signal.
Jan. 11.....	11.30 p.m...	James St., Hamilton..	Not known...	Auto drove through the gates breaking same.
Jan. 15.....	10.00 a.m...	Barton St., Hamilton.	C11-412 Ont..	Drove past watchman who was displaying stop sign.
Jan. 16.....	12.33 a.m...	James St., Hamilton..	54-570 Ont....	Auto speeded through lowered gate breaking off 8 feet.
Jan. 28.....	11.50 p.m...	James and Junter Sts., Hamilton.	56-415 Ont....	Speeded through gates, broke off 8 feet.
Mar. 7.....	8.30 p.m...	James St., Hamilton..	79-406 Ont....	Skidded into gates.
Mar. 18.....	10.35 p.m...	James St., Hamilton..	82-932 Ont....	Drove through both gates breaking them.

ORDER NO. 34908

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company", in pursuance of the General Order of the Board No. 119, dated January 31, 1914, for authority to remove the station agent at Fairmount, Saskatchewan, for the months of May to August, inclusive, of each year.

File No. 18705.135.

MONDAY, the 7th day of April, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the rural municipality of Kindersley, No. 290.

The Board Orders: That the applicant company be, and it is hereby, granted leave, until further order, to remove its station agent at Fairmount, in the province of Saskatchewan, for the months of April to July, inclusive in each year.

F. B. CARVELL,
Chief Commissioner.

ORDER NO. 34914

In the matter of the application of the Canadian Northern Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for permission to open for temporary service the portion of the Cowichan Subdivision between mileage 69.4 and 73.2.

File No. 29893.

WEDNESDAY, the 9th day of April, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer,—

The Board Orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Cowichan Subdivision between mileage 69.4 and 73.2, in the province of British Columbia.

F. B. CARVELL,
Chief Commissioner.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, May 15, 1924

No. 5

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Application of the Corporation of the City of Lachine, P.Q., for an Order authorizing the opening of public way known as Forty-eighth Avenue along the east line of Lot No. 897, across the railway tracks of the C.N. Rys. at rail level.

File No. 33135.

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

The highway crossing referred to herein is in the city of Lachine, P.Q., and across the double tracks of the Canadian National Railway, formerly the Grand Trunk, on what is known as Forty-eighth avenue.

It will be used practically altogether to provide a means of access to the Summerlea Golf Club which lies a short distance north and across the tracks of the Canadian Pacific Railway.

Two lots of land, Nos. 897 and 898, extending from the lake front and north to the Canadian Pacific Railway and beyond were used by the British Remount authorities during the war and a macadamized road constructed the whole length along the east side of lot 897 and across the tracks of the Canadian National. Therefore, the road is already constructed.

The owners of the property have deeded this right of way to the city of Lachine, who have accepted same, and made it a public highway, and are now the applicants for a highway crossing.

It was stated, and I believe admitted by all parties concerned, that it is the only means of access to the Golf Club.

Commissioners Lawrence and Oliver questioned the parties as to whether or not they could use one of the existing highways, such as Forty-fourth street, for the purpose of crossing the tracks, and then travel west along the north side of the right of way to Forty-eighth street, as it was stated by the solicitor for the city that a highway 66 feet wide had been homologated along both sides of the right of way but the answer was that it would be very expensive on account of the land being low and would cost \$25,000 to construct.

Mr. Fraser, representing the railway company, admitted the necessity of the crossing, although he thought that further investigation might be made, and that it was better to take advantage of existing facilities rather than increase them. He stated: "If that cannot be done, that is the end of it. This is a big concern in the town of Lachine, and the Board would not permit them to be held up, and the Board would not make any suggestion that they should be held up."

Therefore, I have no hesitation in coming to the conclusion that the crossing should be allowed.

The question of protection, however, is not so easily disposed of. In the correspondence before the hearing the railway company suggested that the town purchase a large area of land on both sides of the right of way in order to preserve sight lines and see that to a large extent the danger would be eliminated.

It has, however, been pointed out that a highway has been homologated on both sides of the right of way, 66 feet wide, which would provide nearly as much open space as would be provided should the land proposed by the railway be acquired. In fact, it would give something over 200 feet, as the right of way is about 80 feet wide and 66 feet of roadway on either side of the right of way.

The track is straight and the view is unimpeded and while of course the traffic is heavy, yet it will be very largely motor traffic and by people who ought to be able to take care of themselves. For the present I do not see the necessity of any protection, but I think it should be always understood that the railway is senior to the highway, and if the time comes that protection is considered necessary, this principle should be considered in arriving at a decision.

Under these conditions I think an order should issue, granting the crossing, as requested.

April 15, 1924.

Assistant Chief Commissioner McLean and Commissioners Boyce and Oliver concurred.

Complaint of Dominion Millers' Association in re export rates on flour from Ontario points to New York

File 666.1

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I.

In the application as launched, reference is made to the Board's Orders issued July 25, 1905, and September 4, 1905, and numbered 586 and 641 respectively, in the matter of the complaint of the Dominion Millers' Association re rates on flour and other grain products, and it is asked that the Board order the Canadian National and Canadian Pacific Railways to issue their tariffs from points in Ontario to New York based on the so-called reshipping rate from Chicago to New York. As is later indicated, what really is involved is the question of the construction of the terms of the orders in question as affecting the traffic herein concerned.

The fact that the scope of the application was designedly narrowed by the applicant to the matter of the interpretation of the orders in question, with a view to obtaining a ruling as to whether the rates in force were in compliance with the provisions of said orders may be further emphasized by reference to the evidence.

At p. 2765, *Evid. Vol. 407*, Mr. Watts, in response to the query, "Isn't that the question, whether the rates put in force are in compliance with the order or not," answered "Yes, surely that is the question." At p. 2768, he said:—

"This application.....is a very simple one. First, we are simply asking the Board to enforce their own Order in respect of these rates, and.....it is up to the railroads to show that they are com-

plying with the order of the Board and are not discriminating in carrying flour and grain from Chicago at rates which are being charged from Goderich."

At p. 2803, the following discussion took place:—

"The CHIEF COMMISSIONER: Are you narrowing your application down to such places as Port Colborne, Goderich, Tiffin, Port McNicoll, and Owen Sound?

"Mr. WATTS: Yes, sir, milling in transit on the ex-lake rate of 78 per cent of the Chicago reshipping rate; that is exactly what I am after."

At p. 2815, the application as summarized by the Chief Commissioner was stated to be that what was wanted was to have the reshipping export rate apply to all grain that is milled in Ontario. Mr. Watts assented to this statement. A similar position may be referred to on p. 2806.

In the case as presented for the applicant, reference was made to the provisions of sections 314 and 319 of the Railway Act; that is to say, the question of discrimination was raised. The measure of the discrimination as alleged by the applicant is the difference between what the rate would be on the reshipping basis as compared with the local export basis. The significance of these two bases is gone into in further detail later on. But what is in effect being contended is that, under the orders of 1905, the reshipping basis is applicable and that since the rates complained of are not on the reshipping basis the difference represents the discrimination arising from the non-application of the rates which the applicant alleges he is entitled to under the orders of 1905; that is to say, it comes back again to the question of the orders.

As bearing on this, the following excerpt from the evidence (pp. 2771-2) may be referred to:—

"The ASSISTANT CHIEF COMMISSIONER: First of all, we have a case concerned with the construction of the order of 1905. Secondly, we have this question of discrimination against the Eastern mills, and that is a separate and distinct matter not dependent upon the order of 1905.

"Mr. WATTS: No, that is a question of whether the rate now in effect from Goderich as compared with the rate from Fort William is discriminatory.

"The ASSISTANT CHIEF COMMISSIONER: Let me get it clearly. I am not trying to take advantage of you. This is a second separate and distinct case not concerned with the order of 1905.

"Mr. WATTS: It is part and parcel of the order of 1905.

"The CHIEF COMMISSIONER: If we hold that you are right in your contention as to the proper interpretation of the order of 1905, you would take 4 cents off the Goderich rate?

"Mr. WATTS: Yes.

"The CHIEF COMMISSIONER: Then instead of there being a difference of 6½ cents there would be a difference of 2½ cents?

"Mr. WATTS: That is right.

"The CHIEF COMMISSIONER: And that would be the result of changing the rate according to your interpretation of the order of 1905?

"Mr. WATTS: Yes.

"The CHIEF COMMISSIONER: So that really you are asking now what the result would be, you are trying to make out that there is discrimination.

"The CHIEF COMMISSIONER: That is, the present rate is discriminatory?

"Mr. WATTS: But it all gets back again to the proper interpretation of the order of 1905.

"The CHIEF COMMISSIONER: This is simply a second argument why the rate should be reduced.

"Mr. WATTS: Yes, why the rate should be reduced as contemplated, according to my contention, by the order of 1905, because if you do not reduce it that way you are going to make the rate discriminatory against Goderich as opposed to the rate from Fort William on this same product."

As presented, the argument based on discrimination is part and parcel of the argument as to the scope of the orders of 1905. The real question involved is the interpretation.

II

The application as originally filed covered export rates on flour from Ontario points to New York, as governed by the interpretation of the provisions of the orders of 1905. Subsequently, as indicated in the excerpts from evidence already cited, it was enlarged to include ex-lake grain from Bay ports shipped to milling points in Ontario, there milled, and the product reshipped for export; and finally was restricted to the class of traffic just described. But it was still urged that the interpretation of the orders of 1905 was the material question.

III

As above set out, the orders referred are those of July 25, 1905, and September 4, 1905. The order of September 4 was amendatory in regard to the scope of the percentage groupings. The order of July 25 is the one to which especial reference must be made. By section 1 of this order, which is No. 586, it is provided:—

"1. That so long as the companies owning or operating railway lines in Ontario find it convenient and expedient to continue the prevailing system of computing their rates to the Canadian and United States Atlantic seaboard, on freight traffic for export, on the basis of percentages of the co-existent rates from Chicago to New York, or until otherwise ordered by the Board, the said companies shall, for the station groupings, and percentages previously adopted and now in use, substitute the following station groupings and the following maximum percentages of the Chicago to New York rates, namely:—

The complaint which was before the Board and which was dealt with by the orders of 1905, while involving rates on grain and grain products, was wider in that it covered freight traffic generally originating at stations in Ontario and shipped to Montreal and Atlantic seaports for export. Section 6 of the order (No. 586) stated that the provisions of the order were to cover all export traffic including grain and grain products.

The orders prescribed from Ontario points; first, a revision of station groupings and maximum percentages of the Chicago to New York rate to be applicable therefrom to New York which were more favourable to the public than the basis of rates previously charged; second, that export rates to Montreal, instead of being the same as to New York, were to be the same difference below the New York rates as existed from Chicago, Detroit, Port Huron, and intermediate points, with the further stipulation that the ordinary summer class and commodity rates to Montreal were not to be exceeded on export traffic.

In the present application, only the rates to New York were referred to in the application as developed in written submissions and at the hearing.

By reference to section 1 of the order, it will be noted that a new system of rates is not created. Reference is made to the existing system; that is to say, it applies only to rates which are based on percentages of the Chicago to

New York rate. It made readjustments of station groupings and percentages. It did not change the rate basis. As set out in the order, "the said companies shall, for the station groupings and percentages previously adopted, and now in use, substitute the following station groupings and the following maximum percentages. . . ."

The Board's orders above referred to were made effective October 1, 1905. The export rates applied on flour and grain shipped from the various Ontario stations included in the percentage groupings described in the order.

The various Bay ports did not, under the station groupings provided in the orders, all take the same percentage of the Chicago to New York rate.

Under the rates on flour and grain as quoted, neither Ontario-grown grain nor ex-lake grain could be stopped off in transit for milling and reshipment of the changed product to New York for export at the through rate, plus a stop-off charge. The rate simply applied on grain or flour shipped, without stopping in transit or change in the character of the commodity, from the Ontario point of origin to New York for export. The Board's orders in question did not prescribe milling in transit rates or milling in transit privileges with respect to either class of grain here described.

In the case of ex-lake grain from Bay ports to Montreal, Portland, etc., the rates are not now and never have been based on the Chicago-New York rate and the percentage groupings.

In the case of wheat, ex-lake, milled in transit at stations in Ontario, the flour being reshipped to Montreal for export, there was in effect on October 1, 1905, a rate from Bay ports which was not modified by the Board's orders of 1905. The rate in question was not based on the Chicago-New York rate.

A tariff establishing the milling in transit arrangements on ex-lake grain from the Bay ports to Portland, Boston, St. John and Halifax came into force from June 10, 1907. The rates involved were not based on the Chicago-New York rate, but upon the customary differences over the Montreal rate.

As regards New York, there was no tariff in existence in 1905—nor was one issued as a result of the Board's orders in that year—naming (a) ex-lake grain rates from Bay ports to New York for export; (b) through ex-lake rates on grain from Bay ports shipped to milling points in Ontario, there milled, and the product reshipped to New York for export.

The item above referred to as (a) is still in the situation that there are no rates in connection with this traffic. Item (b) is the matter raised in the present application, after the modification made by the applicant as set out in section II above.

While the orders of 1905, on which reliance is placed from the standpoint on interpretation, became effective October 1, 1905, ten years elapsed before the tariff issued dealing with the item marked (b) in the preceding paragraph. It was not until December 15, 1915, after considerable correspondence, and a discussion which took place at Montreal on November 16, 1915, between Mr. Watts and representatives of the Grand Trunk Railway Company, that a tariff was put into force applying from Bay ports on grain, ex-lake, for milling in transit and reshipment to New York, Philadelphia and Baltimore for export.

In a summary way, it may be stated that traffic has been moving for years to New York from various points on rates which are not a percentage of the Chicago-New York rate, and which have not been alleged, until the present application was launched, to fall within the provisions of the orders of 1905. The fact that a specific tariff was put in to deal with a movement to New York for export, including stop-off for milling at points in Ontario, would appear to be of special significance in regard to the understanding by shippers of the scope of the orders of 1905.

IV

The essence of the application is that the ex-lake rate from Bay ports to New York, for export, be measured by the Chicago-New York reshipping or proportional rate so-called using the percentages as prescribed in the orders of 1905. There are now in effect from Chicago to New York two sets of rates on grain, flour and other grain products. One of these is known as the Chicago-New York local export rate; the other is the Chicago-New York proportional or reshipping export rate.

The local export rate applies on traffic originating locally at Chicago, and it also governs on grain products or flour on which the transit privilege has expired by limitation. When the orders of 1905 issued, there was no definite proportional or reshipping rate in existence from Chicago applying on flour or other grain products; that is to say, the local export rate from Chicago to New York was the rate to which the percentages of the groupings provided for under the orders were applied.

In May, 1907, there came into operation the proportional or reshipping rate which represented the proportions then obtaining east of Chicago out of the joint through rates from Minneapolis. Under the American tariffs (C.F.A.) No. C.R.C. No. 825), carrying the provisions in this regard, it is set out that the reshipping or proportional rates concerned will apply only on the traffic when originating at points from which no joint through rate is in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination.

East of the Indiana-Illinois State line, the rates on the commodities concerned have never been measured with relation to the proportional or reshipping rates from Chicago, but have been measured with due relation to the local export rate from Chicago. There must be borne in mind the further fact that a large amount of traffic is handled under milling in transit arrangements, under which the through rate on grain or grain products, whichever is higher, from the point of origin of the grain, or basing point, to final destination, plus transit charge, is protected.

V

What is involved is not the unreasonableness of existing rates in themselves. The single question involved is the interpretation of the orders of 1905 as affecting the rates operative, Mr. Watts, who is active in the application, has for years been engaged in the grain business and has given much attention to the question of grain rates. He has designedly limited his application to the question of the interpretation of the orders of 1905. This significant limitation defines the matter which is before the Board.

As pointed out, when the orders became effective, the local export rate was in existence. This, manifestly, was the only rate basis to which the percentage system could apply at the time in question. Subsequently the reshipping rate came into existence. Both the local export rate and the reshipping rates are now in existence. Mr. Watts contends, in substance, that the local export rate is simply a paper rate so far as United States traffic is concerned. This does not, however, affect the question of interpretation. What is involved in the matter of interpretation is what the orders of 1905 were dealing with.

What was before the Board in 1905 was export traffic originating at points in Ontario. With respect to this, the principle of the Chicago-New York rate basis being already operative, the orders fixed revised percentage groupings. The rates charged were in relation to the rates on United States traffic which was treated from a rate standpoint as originating at Chicago.

There were not before the Board in 1905 any submissions regarding, on the one hand, through rates from United States points west or north of Chicago, and, on the other hand, through rates from Canadian points beyond the Bay ports. The percentages prescribed were percentages of Chicago-New York rates to be applicable from Ontario points. They were not percentages of that proportion of the through rate from points west or north of Chicago which was represented by the proportion of this through rate accruing to the roads running east from Chicago. This proportion of the through rates was published in 1907 as a proportional or reshipping rate applicable east of Chicago, with respect to traffic originating west or north thereof. But while this is true, neither the record nor the orders of 1905 disclose that the arrangement made in 1907 was in contemplation or considered in connection with the issuance of the orders of 1905.

Dealing with rates to New York on the specific traffic referred to, the conclusions justifiable are as follows:—

(1) The orders covered only such export rates from Ontario points as were based on percentages of the Chicago-New York rates.

(2) The orders did not affect export rates from Ontario points where the rates were not at that time constructed on percentages of the Chicago-New York rates.

(3) The orders did not apply with respect to any class or traffic on which export rates to New York were not at that time in existence.

(4) The orders did not prescribe milling in transit rates or milling in transit privileges.

(5) The orders fixed rates from Ontario points based on percentages of the rate from Chicago, not percentages based on the proportion accruing to the roads east of Chicago on traffic originating in territory west or north of Chicago.

The justifiable interpretation of the orders of 1905 would, then, appear to be that the percentages provided for under said orders were based upon the local export rate, the only rate basis available at that time; and it further appears that in respect of ex-lake grain from Bay ports shipped to milling points in Ontario, there milled and the product reshipped for export, this traffic was not covered by the orders in question. Consequently, the allegation that the orders of 1905 have been violated in respect of this traffic fails.

April 19, 1924.

The Chief Commissioner, Hon. F. B. Carvell, K.C., and Commissioner Lawrence concurred.

*Complaint of the Borden Milk Company re Tillson Spur Line Railway,
Tillsonburg, Ontario.*

File No. 29165

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner:*

This is an application on behalf of the town of Tillsonburg and of the Borden Milk Company, asking the Board to order the Tillson Spur Line Railway Company to place their tracks in such condition that they will be reasonably safe and fit for operation.

At the hearing in Toronto on the 9th of January last, Mr. Sinclair, for the complainants, made a statement of the facts of the case, which I think very clearly sets forth the same, as follows:—

“I might state the facts in connection with the matter, because they are rather intricate.

"Prior to 1891 the Tillson Company owned three large mills in the town of Tillsonburg. They were situated in a ravine, rather difficult to get at, and involving very heavy charges for teaming. They decided to build a railway connecting the mills with the Michigan Central spur and to the Grand Trunk Railway. To do that, they incorporated the Tillson Spur Line Railway Company and they constructed a spur running from their mills, connecting with the Michigan Central Railway and connecting with the Grand Trunk Railway. Subsequently the Canadian Pacific Railway were given running rights over the Michigan Central spur and all these three railway companies, under operating agreements, went down to the mills and took their freight and delivered it; took the freight away, so that the railway was operated by the three main roads.

"That being the condition, the Borden Company were approached by the town of Tillsonburg to locate in Tillsonburg. One of the terms of the agreement was that the Tillson Spur Line Railway Company were to give the Borden Company rights over this road. They located to the west of the road and down in the ravine also, so that the three companies, that is the Tillson Company, the Spur Line Company, and the Borden Company, entered into an agreement with the town. The agreement between the town and the Borden Company and the Spur Line Company contained this clause, numbered 9. I have here a printed copy of the agreement which I will file with the Board. Clause 9 of that says:—The said railway company, that is the Tillson Spur Line Company, hereby covenants and agrees with the Borden Company to allow the said company to make connection with and use the main track of the said Tillson Spur Line Railway so long as the said track is operated and to use the same in the manner best calculated to suit the convenience of the factories located on the railway, and to keep open the said railway without charge to them.

"The town of Tillsonburg, and the Tillson Company which owned the stock in the Spur Line Company and the Spur Line Company entered into an agreement by which the town agreed to pay the Tillson Company and the Spur Line Company \$300 a year for the property. They have paid that from that time up to the month of June last, when the Spur Line Railway Company, or the Canadian Cereal Company, which bought out the Tillson Company, refused to keep the road in repair, and the railways refused to operate it. The rent has been paid up to that time.

"The Canadian Cereal Company comes on the scene as being the successors of the Tillson Company, whom they bought out. The Tillson Company were the owners of the stock in the Spur Line Railway Company and when the transaction took place the Tillson Spur Line Company was transferred to the Canadian Cereal Company and they put their nominees on the board of directors. Since that time there has been a liquidation of the Cereal Company and Mr. Jameson is the liquidator. As far as I know, the Tillson Spur Line Company has never gone into liquidation but remains in existence as a railway company.

"I am applying for an order that the Tillson Spur Line Railway Company put its road in repair so that it can be used by the railways to carry out their agreement with the town."

The Assistant Chief Commissioner asked him, page 100,—

"Under what legislation was this spur built?"—

which Mr. Sinclair answered as follows, page 101,—

"It was originally incorporated under the Ontario Act, but came under the Dominion jurisdiction by reason of the operation by Dominion

companies, under section 6, subsection C. There never was an operating company. It has always been operated by the three lines. It was under the Dominion jurisdiction prior to that by reason of the fact that it was connected with Dominion roads.”—

and it seems to me that the whole question at issue is whether or not the Tillson Spur Line Railway Company is under the jurisdiction of this Board, and of course, if not, then we have no power to order the improvements asked for.

If the Tillson Spur Line Railway has been declared to be a work for the general advantage of Canada and therefore under the jurisdiction of this Board, it must be because it is now “owned, controlled, leased or operated” by a company wholly or partly within the legislative authority of the Parliament of Canada, or “it is a company operating a railway wholly or partly within the legislative authority of the Parliament of Canada.” Evidently the latter condition does not exist because there is no intimation that the Tillson Spur Line Company itself owns, leases or operates any other railway, whether under the jurisdiction of this Board or not. It then comes back to the other proposal, namely, that the Tillson Spur Line Company is owned, controlled, leased or operated by a company under the jurisdiction of the Board, which in the present case, would be either the Canadian Pacific, Canadian National or Michigan Central.

At the hearing, certain contracts were referred to and all the parties thereto were notified to produce any other evidence as to contracts which might be in their possession. I am satisfied that the only agreements which could throw any light upon this are the following:—

1. Contract dated August 31, 1895, between the Tillson Spur Line Railway Company and the Grand Trunk Railway Company of Canada.
2. Contract dated the 22nd of October, 1907, between the town of Tillsonburg and the Borden's Condensed Milk Company.
3. Contract dated the 12th of March, 1920, between the Canadian Pacific Railway Company, the Grand Trunk Railway Company and the Michigan Central Railway Company.

The agreement dated the 31st of August, 1895, was between the Tillson Spur Line Railway Company and the Grand Trunk Railway Company of Canada, which simply provides for a connection between the two, and recites the fact that the Spur Line Company is the owner of a certain line of railway and wishes to connect its line with a line of the Grand Trunk, at or near Tillsonburg. The Grand Trunk consents that the Spur Line Company may connect with the Grand Trunk Railway at a certain point and provides for the switching arrangements and the operation thereof, and in consideration of providing switches and signals the Spur Line agreed to pay to the Grand Trunk the sum of \$44 per annum. The only portion of this agreement in any way referring to operation is section 7, which is as follows: “It is also agreed that the Spur Line Company shall give the Grand Trunk facilities equal to those granted to any other company in regard to the working of traffic. . . .”

The second contract is dated the 22nd of October, 1907, between the Municipal Corporation of the town of Tillsonburg and the Borden Condensed Milk Company, and in no way refers to the operation of the railway by any Dominion Railway Company.

The third is a tripartite agreement, dated the 12th of March, 1920, between the Canadian Pacific, the Grand Trunk and the Michigan Central Railways, by which they agree among themselves as to the manner of operation of cars over the Tillson Spur Line Railway.

As I construe subclause “C” of section 6, hereinbefore referred to, and without making any reference as to whether or not it was *ultra vires* of the

Dominion of Canada, but taking it as it stands, in order that the Tillson Spur Line Railway could come under the provisions of this subsection, it would actually have to be owned, controlled, leased or operated by some Dominion company; not merely operated by way of spotting and picking up cars as might be done at an ordinary siding or transfer track but really controlled and operated by some legal right in such a manner that the Dominion company would be the owner for the time being of the railway for operating purposes and not simply enjoying the right with two other railways, as exists in this case, of running their trains over the tracks of the Tillson Railway for the purpose of spotting or lifting cars.

I am unable to find that the Tillson Spur Line Railway is now "owned, controlled, leased or operated by a company wholly or partly within the legislative authority of the Dominion of Canada", and therefore is not under the jurisdiction of this Board, and we have no power to order the improvements as requested, and the application should be dismissed.

April 26, 1924.

Assistant Chief Commissioner McLean and Commissioners Lawrence and Oliver concurred.

GENERAL ORDER No. 397

In the matter of the application of the Railway Association of Canada for certain amendments to Rules 93 and 99 of the General Train and Interlocking Rules, in order to provide for the method of operation now employed by certain of its member railways, under 'so-called Special Instruction "E"'.

File No. 4135.26

WEDNESDAY, the 16th day of April, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Whereas by General Order No. 322, dated December 10, 1920, all railway companies subject to the jurisdiction of the Board were required to withdraw the said Special Instruction "E" from their respective working timetables, and thereafter observe the Uniform Code of Rules for Canadian Railways, approved by General Order No. 42, dated July 12, 1909; the necessary changes and instructions to employees to become effective June 1, 1921.

And whereas the time within which the said changes and instructions might become effective was extended, by General Orders Nos. 340 and 343, until June 15, 1921, and September 1, 1921, respectively; or until further order of the Board.

And whereas meetings and conferences have been held between officers of the Board and the parties concerned, and written submissions filed,—

The Board orders: That the time within which the said changes and instructions may become effective be, and it is hereby, further extended until the 1st day of August, 1924; and that, in the interval, all railway companies now carrying such Special Instruction "E" in their time table file the same with the Board for approval under section 293 of the Railway Act, 1919.

And the Board further orders: That the application for amendments to rules 93 and 99 of the General Train and Interlocking Rules be refused.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 399

In the matter of Section 345 of the Railway Act, 1919, and the form of free or reduced rate transportation returns to be filed with the Board.

File No. 496.27

THURSDAY, the 1st day of May, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Whereas the said section 345 provides, *inter alia*, for the making of periodical returns, duly verified by affidavit, to the Board in respect of the carriage of traffic free, or at reduced rates, by companies within the legislative authority of the Parliament of Canada; and that it shall be the duty of the Board to examine such returns with a view to seeing that the law has been observed;

And whereas the Board has, under General Order No. 365, specified certain dates for the filing of the said periodical returns,—

The Board therefore orders:

That the returns required to be filed with the Board by each company subject to its jurisdiction, under clause 1 (d) and clause 2 of the said General Order No. 365, shall comprise the following particulars:—

1. A general statement indicating the number of all free annual and trip passes and reduced rate transportation issued under each respective series to

- (a) the directors of the company and to their families;
- (b) such officers, agents, and employees of the company as are at the time of the issue of transportation carried on the pay-roll, and their families;
- (c) such retired, pensioned, furloughed, or superannuated officers and employees of the company as are carried on the company's official list of such retired, pensioned, furloughed, or superannuated employees, and to their families; and
- (d) officers, agents, and employees of other railway and steamship companies, and their families, upon application of the officer authorized to make requests for free transportation.

Provided, however, that the company shall keep records available and convenient for examination, whenever necessary, of such data and information as will justify the lawful issue of all or any of the free or reduced rate transportation issued by the company, and all such records, pay-rolls, and such official lists of retired, pensioned, furloughed, or superannuated officers and employees upon which free transportation has been issued, shall be at all times available for the inspection of the Board.

2. A detailed statement as to all other persons to whom free or reduced rate transportation, for passenger and freight traffic, has been issued under the provisions of sub-clauses (a), (c), and (d) of subsection (1) of section 345 of the Railway Act, 1919, or, of the orders of the Board, or of Special Acts of Parliament, during the period covered by the returns, indicating kind of passes, series, and numbers, names, description, and territory.

3. The affidavit of verification covering all such returns shall be made and sworn to by an officer of the company having full knowledge of all such free or reduced rate transportation issued by the company, and having access to all the records necessary to justify the issue thereof, and such affidavit of verification shall specify—

- (a) That the affiant is an officer of the company having full knowledge of all the free and reduced rate transportation for passenger or freight traffic issued by the company, and has the custody of, or access to, all the records of the company from which the returns of such transportation are made up under the provisions of section 345 of the Railway Act, 1919;
- (b) That to the best of such officer's knowledge and belief, all free or reduced transportation included in such return, has been issued in compliance with the provisions of the Railway Act, 1919, and of the orders and regulations of this Board, and that none of the same has been issued that is not authorized by law.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34942

In the matter of the application of the Schomberg & Aurora Railway Company, hereinafter called the "applicant company," under section 330 of the Railway Act, 1919, for approval of its Standard Freight Tariff C.R.C. No. 160, on file with the Board under file No. 33205.

TUESDAY, the 22nd day of April, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's Standard Freight Tariff, C.R.C. No. 160, on file with the Board under file No. 33205, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34944

In the matter of the application of The Eastern Canada Live Stock Union for an Order suspending the operation of the proposed increase by the railway companies of the minimum charge on carloads of live stock.

File No. 27553.13

THURSDAY, the 24th day of April, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
 S. J. McLEAN, *Assistant Chief Commissioner.*
 A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Canadian Packing Company, Limited, and the Canadian Freight Association; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the portions of the following tariffs, namely:—

	Supple- ment No.	Tariff CRC No.	Effective Date.
New York Central Railroad Company... ..	1	2513	May 12, 1924
Canadian National Railway Company.. ..	4	E-700	April 19, 1924
Pere Marquette Railway Company... ..	6	2463	April 1, 1924
Michigan Central Railroad Company... ..	88	3074	April 19, 1924
Toronto, Hamilton and Buffalo Railway Company... ..	17	1112	April 19, 1924
Chatham, Wallaceburg and Lake Erie Rail- way Company... ..	2	673	March 15, 1924
Canadian Pacific Railway Company... ..	11	E-3876	April 19, 1924
Lake Erie and Northern Railway Company	4	245	April 26, 1924
Grand River Railway Company... ..	4	119	April 26, 1924

establishing a minimum charge of twelve dollars (\$12) a car on live stock moving locally between points on the said lines of railway, be, and they are hereby, suspended as from the effective date thereof, pending hearing by the Board.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34963

In the matter of the application of the Express Traffic Association of Canada for approval of Supplement No. 3 to C.R.C. No. E.T. 694, covering Regulations for the Transportation by express of acids, inflammables, oxidizing substances, and samples of explosives.

File No. 1717.12

FRIDAY, the 25th day of April, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
 S. J. McLEAN, *Assistant Chief Commissioner.*
 A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer, and reading what is filed in support of the application,—

The Board orders: That the said Supplement No. 3 to C.R.C. No. E.T. 694, Regulations for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, Samples of Explosives, etc., on file with the Board under file No. 1717.12, be, and it is hereby, approved.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 34991

In the matter of the Order of the Board No. 34754, dated February 14, 1924, suspending certain schedules cancelling various commodity express rates between points in Eastern Canada, pending investigation.

File No. 33218

SATURDAY, the 26th day of April, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

HON. FRANK OLIVER, *Commissioner.*

Upon hearing the matter at the sittings of the Board held March 6, 1924, in the presence of representatives of the Express Traffic Association of Canada, the Canadian National Railway Company (Express Department), the Toronto Board of Trade, Toronto Produce Exchange, and the Montreal Board of Trade and affiliated associations, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer, and its appearing that a revised basis of rates on fish has been agreed upon and tariff schedules giving effect to the same have been filed, effective May 1, 1924,—

The Board orders: That the said Order No. 34754, dated February 14, 1924, in so far as it suspends Supplement No. 1 to the Canadian National Railway Company's Express Department's Tariff, C.R.C. No. 31, and Supplement No. 3 to the Dominion Express Company's Tariff, C.R.C. No. 4670, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 34995

In the matter of the application of the Express Traffic Association of Canada, for approval of Supplement "H" to Express Classification for Canada No. 5, on file with the Board under file No. 4397-73.

THURSDAY, the 1st day of May, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Whereas notice has been given by the Express Traffic Association of Canada in the *Canada Gazette* and to the mercantile organizations enumerated in the general orders of the Board Nos. 271, 348 and 353; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders as follows:—

1. That the said proposed Supplement "H" to Express Classification for Canada No. 5, with the exception of the proposed change in condition of Carriage No. 18, which has subsequently been withdrawn by the applicant, be, and it is hereby, approved for consolidation with the Express Classification for Canada No. 5 and supplements thereto, the new consolidated issue to be known as Express Classification for Canada No. 6.

2. That in the new consolidated issue the following amendments in the wording of items in Express Classification for Canada No. 5, which do not advance any of the said ratings or charges but are made for the purpose of clarifying the wording, or reducing the charge, are hereby authorized, namely:—

(a) Article 1, page 26, of the Express Classification for Canada No. 5, as amended by Supplement No. 4, to be changed to read:—

"When the weight of any shipment of bonds, stocks, or other securities, complete or incomplete, exceeds one pound to the \$1,000 value, assess

additionally the charge of a package of first-class matter of the same weight, except that the charge must not exceed the charge for a package of a similar weight with a greater value”.

(b) Change description of territory on page 24 of Classification No. 5 to read:—

“1. *Western Territory*.—West of and including Fort William and Armstrong, Ont., the company will provide free transportation for not more than two attendants with each carload of horses.

“2. *Eastern Territory*.—East of and including Fort William and Armstrong, Ont., free transportation will be provided for attendants as follows:”

(c) Supplement 7 to Express Classification for Canada No. 5, item 19½, page 4, to be changed to read:—

Radio Parts:

Amplifier tubes and detector vacuum tubes (such as peanut and radiotrom tubes)	1½ t. 1
N.O.S.	1”

(d) Condition of Carriage No. 14 (c), page 5, of Classification No. 5, to be changed to read:—

On Live Animals or Birds:

“The liability of the company on any shipment of live animals or birds shall be limited to the amounts specified below, unless a greater value is declared and embodied in the receipt or contract.

“The classification rates on live animals or birds are based on the following maximum values:

“Horses, jacks or mules \$100 each

“Bulls, steers, cows, calves, ponies, colts, hogs, sheep, goats, dogs, deer elks, or other animals not specified in this rule \$50 each

“Cats, ferrets, guinea pigs, rabbits, hares, mice, squirrels, and other pet animals of similar character; reptiles, pigeons, and other birds, and poultry, fancy or common (except that the valuation charges on common poultry for market will be the same as for merchandise, as provided in item (a) above) \$5 each

“Should the shippers desire the company to assume liability in excess of the above, the value must be declared and embodied in the receipt or contract. An additional charge will be made on the excess value as follows:—

“When the value declared by the shipper exceeds the above, an additional charge will be made on the excess value as follows:—

“When the first-class rate is not over \$2.70 per 100 pounds, the additional charge will be 1½ per cent of the excess valuation.

“When the first-class rate is over \$2.70 and not over \$4.05 per 100 pounds, the additional charge will be 2 per cent of the excess valuation.

“When the first-class rate is over \$4.05 and not over \$6.75 per 100 pounds, the additional charge will be 2½ per cent of the excess valuation.

“When the first-class rate is over \$6.75 per 100 pounds, the additional charge will be 3 per cent of the excess valuation.

(e) Supplement 8 to Express Classification for Canada No. 5, Item 13, to be changed to read:—

Drums:

Metal kettle drums or tympanis	1
N.O.S.	2 t. 1

" Must be boxed, crated, or in fibreboard, pulpboard, or double-faced corrugated strawboard boxes. Heads must be completely covered with wooden boards or with solid fibreboard or pulpboard having a resistance of not less than 275 pounds per square inch, Mullen Test.

" Will not be accepted when not so packed."

(f) Change seventh paragraph of condition of Carriage No. 16 (a) to read:—

" Cases, the combined exterior measurement of which is not over 50 inches, must be securely tied or fastened together, otherwise each case will be charged as a separate shipment. The charge on such cartons, tied or fastened together, must not be greater than if shipped separately".

(g) The second paragraph of Conditions of Carriage No. 16 (b) to be changed to read:—

" Two or more boxes, the combined measurement of which is not over 50 inches, must be securely tied or fastened together, otherwise each box will be charged as a separate shipment. The charge on such boxes, tied or fastened together, must not be greater than if shipped separately".

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35000

In the matter of the Order of the Board No. 34296, dated October 9, 1923, authorizing the Vancouver Harbour Commissioners to open for the carriage of freight traffic, temporarily, that portion of their terminal railway between the Government Elevator and Ballantyne Pier, in the City of Vancouver, in the Province of British Columbia; and the application permanently to operate the said line of railway.

File No. 30281.1

SATURDAY, the 3rd day of May, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon its appearing by the report of its Engineer that the said line of railway has been completed and is now, in his opinion, reasonably safe for the carriage of freight traffic, and upon his recommendation, concurred in by its Chief Engineer,—

The Board orders: That permanent operation for freight traffic be approved; and that the said Order No. 34296, dated October 9, 1923, be amended by striking out the word "temporarily", in the third line of the operative part of the order.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Re proposed Northwest Grade Separation, Toronto

File 32453

JUDGMENT

Hon. F. B. CARVELL, K.C., CHIEF COMMISSIONER:

In the month of November, 1922, the city of Toronto made application to this Board for an order that the Canadian Pacific Railway Company and the Canadian National Railways be required to collaborate with the corporation in the preparation of a joint plan for the separation of grades in the northwestern portion of the city of Toronto.

Parties were heard at Toronto on the 14th of February, 1923, when, after considerable discussion it was suggested that the city and the two railway companies endeavour to arrive at a satisfactory agreement among themselves. A great many conferences were held and, we believe, an honest attempt was made by all parties concerned, to arrive at a conclusion, but as they failed to do so, the case finally came on for hearing at Toronto on the 8th day of January, 1924, when separate proposals were made by the city of Toronto, Canadian Pacific and Canadian National Railways.

Generally speaking, the application as developed involved,—

(1) Grade separation at all level street crossings now existing on the Canadian Pacific double track known as the Galt Subdivision, the Canadian National double track Brampton Division and the Canadian Pacific single track known as the Toronto, Grey and Bruce, from Bloor street north to and including St. Clair avenue and also including Wallace avenue, Humberside avenue, and Junction road, at which there are no level street crossings at the present time.

(2) Subways at all level street crossings on the Canadian Pacific Railway North Toronto line, from the West Toronto diamonds eastwardly to and including Bartlett avenue, as well as grade separations at Primrose and Perth avenues, at which points there are now no level crossings.

(3) Subways at all level street crossings on the Canadian National Newmarket Subdivision from Bloor street northerly to and including St. Clair avenue and also grade separations at Wallace avenue and Lappin avenue, at which points there are now no level crossings.

The Canadian Pacific filed plans and made proposals proposing grade separations on the first of the lines above mentioned at Bloor street, Royce

avenue and St. Clair avenue, and on their North Toronto line, being the second above mentioned at all street crossings proposed by the city, with the exception of Perth and Primrose avenues.

The Canadian National proposed a cut-off from a point some distance north on their Newmarket subdivision running southwesterly and connecting with their Brampton Subdivision just north of St. Clair avenue, thereby proposing that all their trains should run over this cut-off and the Brampton Subdivision to and from the city, leaving the Newmarket Subdivision purely as an industrial and switching track and suggested that there be no grade separations on that subdivision.

The city proposed the elevation of the tracks on the main double track lines, being the first line herein referred to, commencing at a point about 4,000 feet south of Bloor street and reaching an elevation of ten feet above the present track level at Wallace avenue; continuing the same elevation beyond Royce avenue, with an excavation $8\frac{1}{2}$ feet deep between the West Toronto diamonds and St. Clair avenue, and suggested that all tracks on these lines be bunched together leaving sufficient space for six tracks, the objects being to shorten the subways and reduce consequent land damages.

The city also proposed the elevation of tracks on the North Toronto line from $4\frac{1}{2}$ to $6\frac{1}{2}$ feet, and the elevation of tracks on the Newmarket Subdivision, nearly corresponding to the proposed elevation on the main double track lines. The Canadian Pacific objected to the elevation of tracks on the main double track line to any extent, and also to the bunching of tracks as suggested by the city, on two grounds. First, that it would seriously interfere with the traffic possibilities, as it would increase the grade from 0.84 to something over 1 per cent, and secondly, that such an elevation would seriously interfere with the service to existing branch lines or industrial spurs.

Both railway companies objected to the bunching of tracks or in any way contracting the available trackage space as it is the main entrance of both railways from the north into the city of Toronto, and they objected to any curtailment of the possibilities of further development which would result from a contraction of the existing space. The Canadian Pacific proposed elevating their tracks on the North Toronto division, generally speaking, from $1\frac{1}{2}$ feet to $3\frac{1}{2}$ feet less than that proposed by the city, claiming that the elevations which they were proposing were absolutely the limit consistent with the proper operation of industrial spurs as they are now located.

The Canadian National proposed the elevation of the tracks on the main double track line somewhat less than that proposed by the city, but reaching the same elevation, namely, ten feet at Royce avenue, but objected to any elevation of tracks on the Newmarket subdivision excepting about three or four feet at the diamond at the crossing of the Newmarket North Toronto Canadian Pacific Subdivisions necessary to meet the proposed elevation of the North Toronto grade.

If the city's proposal should be carried out, it would greatly decrease land damages, because the subway approaches would not extend nearly as far away from the tracks as they would if the subways were constructed under the tracks at the existing levels, moreover, the elevation of the tracks would probably make it possible to construct subways in future more easily than it could otherwise be done, but on the other hand there would be an increase in cost in elevating the tracks.

The territory served by the three railways as above described is the great industrial centre of the city of Toronto and probably the greatest industrial centre in Canada, and I feel it would be a great mistake to do anything which would hamper access to and from these industries or in any way tend to discourage not only present conditions but expansion, and therefore feel that

the tracks should not be elevated except where absolutely necessary, and then only to the minimum height, in order to carry out necessary improvements.

The matter must be looked at not only from the standpoint of the grades on the railway tracks, but also from the standpoint of the grades on the industrial sidings, serving industries tributary to the railways. For example, on the Galt subdivision of the Canadian Pacific Railway, the Canadian National double track Brampton division, and the Canadian Pacific single-track line known as the Toronto, Grey and Bruce, the maximum grade at present is 0.84 per cent. If the city's plan were followed, this would increase the grade to 1.04 per cent, thus distinctly lessening the operating efficiency of the railways.

On the railway plans as filed, the maximum grade proposed on the industrial sidings on the lines above mentioned, as well as on the Canadian Pacific North Toronto line, is 2 per cent. This is the same maximum which was adopted by the Board in the case of the industrial sidings on the North Toronto Grade Separation. To adopt, as is set out in various portions of the city's plan, industrial siding grades in excess of 2 per cent would not only curtail the facilities of the industries concerned, but would also interfere with the economic operation of the railway trackage.

I also think it would be very unwise to bunch together existing tracks thereby restricting the use by the railways of any land now possessed by them in their entrance to the city of Toronto. While no doubt for many years sufficient room would be left after taking away 40 or 50 feet of land, but it is the principal entrance from the north to the city of Toronto, which to-day is the second largest city in Canada, and which without doubt will be one of the greatest cities of the continent, and for the small amount of money to be saved I think it would be a great mistake to in any way interfere with further requirements in the way of traffic.

While no doubt the construction of the cut-off herein referred to might be an advantage to the Canadian National Railways from an operating standpoint, yet I feel sure that the retention of the Newmarket Subdivision from Bloor street to St. Clair avenue as an industrial proposition will be productive of such interference with street traffic with resulting danger to the public, as will necessitate, in the interests of public safety, grade separations at points hereinafter referred to, where the street traffic is congested. The maintenance of these tracks, for industrial purposes, will involve a great deal of switching. That switching must be carried on in congested areas over street crossings at grade where traffic is dense, and would unquestionably prove a menace to public safety. This Board has become convinced that switching movements in congested areas are as dangerous as, and probably more dangerous, by reason of their frequency and uncertainty than regular train movements, and the Board's record of fatal accidents (one of recent date in the city of Toronto over purely industrial tracks, involving the loss of two lives) abundantly substantiate this statement. To limit the hours during which switching movements can be carried on in a congested industrial area, in a city the size of Toronto, is not possible without serious interference with traffic and imposing serious inconvenience upon the important interests concerned therein. Due consideration having been given to all these factors, I am satisfied that in the interest of public safety and having regard to all other considerations as to convenience of and non-interference with the traffic tributary to this area, this line should not be retained for industrial purposes without separation of grade at congested grade crossings.

It is my view, therefore, that the whole situation should be settled now on lines which this Board considers just and proper, having regard to the paramount consideration of public safety, and if the Canadian National Railways are desirous of building a cut-off it must be done by them as a transportation

policy and not under direction of this Board as part of a general scheme to render more safe the operation of railways in this portion of the city of Toronto.

The reference above made to the elevation of tracks and their consequent interference with the proper use of industrial spurs applied to spur lines on the Newmarket Subdivision as well as on the double track lines, and therefore I am unable to agree with the city's contention as to either the elevation of tracks or the bunching of the same, or with the Canadian National Railways' proposition as to the construction of the cut-off and the elimination of any grade separation on the Newmarket Subdivision.

The city and the Canadian Pacific Railway proposed an overhead bridge at St. Clair avenue. The Canadian National Railway, however, proposed a subway, on the ground that it answered the purpose just as well and would be considerably cheaper. This seems to be admitted by the Canadian Pacific Railway and the city, and therefore I think there should be a subway at this point rather than an overhead bridge. The city proposed a subway at Junction road, which was not in the Canadian Pacific Railway proposals. It is my opinion that this is necessary, as far east as Miller street, and I think it should be constructed, but it seems to me that the overhead bridge on Weston road should be eliminated, as both do not seem necessary. I know it makes the traffic along the Weston road into the city a little more circuitous and possibly a little more lengthy, but with subways at Keele street, Junction road, Osler and Royce avenues, further maintenance of this bridge would be unnecessary.

I, therefore, think an order should issue laying down the following principles for grade separations on the railways herein referred to as follows:—

(1) On the main double track lines herein referred to as Galt, Brampton and Toronto, Grey and Bruce subdivisions there should be no change in grade or interference with the width of right of way, and there should be subways constructed at Bloor street, Royce avenue, Junction road and St. Clair avenue, all these subways to be the full width of the street with 14-foot clearances, the Junction road subway to extend as far east as Miller street. If the city desire a continuance thereof to Davenport road it would be a matter for them to work out as they thought best, the present Weston road bridge to be eliminated; the Royce avenue subway to involve the acquisition of additional land and the construction of a diversion of Dundas street as set forth on the Canadian Pacific Railway plan.

(2) Track elevation and grade separations on the Canadian Pacific Railway North Toronto line, according to the plan filed by the Canadian Pacific Railway, and including subways at Osler avenue, Symington street, Lansdowne avenue, Dufferin street and Bartlett avenue, all to be the full width of street and 14-foot clearances.

(3) Subways to be constructed on the Newmarket Subdivision at Bloor street, Royce avenue, Davenport road and St. Clair avenue, all to be the full width of street and 14-foot clearances, and in all these cases, if the city requires greater clearances than 14 feet, which is the statutory standard, the same to be granted, the additional expense, however, to be borne entirely by the city.

I think it unnecessary to make any reference to the question of costs, because there is not very much difference in the ultimate cost of any of the schemes proposed, but the general proposals herein laid down are based more upon the requirements of the industries of the city of Toronto and the operation of the railways both at the present and the future, and the laying down of a comprehensive scheme of grade separation in that portion of the city, than upon the mere question of cost, although, of course, that should play an important part in any matters of this kind.

Copies of this judgment and the order based hereon to be sent to all interested parties and another hearing to be held at the earliest possible date, for the

purpose of settling all details of an engineering nature, the distribution of cost and the time and method of carrying out the work herein provided for.

May 8, 1924.

Assistant Chief Commissioner McLean and Commissioners Boyce and Lawrence concurred.

COMMISSIONER OLIVER:

I agree with the judgment of the Chief Commissioner in so far as the subways across the tracks of the Canadian National and Canadian Pacific Railways from Bloor street to St. Clair avenue, inclusive, are concerned, and also in regard to subways on the North Toronto connection of the Canadian Pacific.

As to the Newmarket subdivision of the National Railway, my opinion is that all interests would be best served by establishing a connection between the Newmarket and Brampton subdivisions at some point west of St. Clair avenue, and routing all trains, both freight and passenger, moving between Toronto central station and that junction, over the double track lines. If this were done, as suggested by Mr. H. M. McLeod, the section of the Newmarket line from which traffic had thus been diverted, would be used only as an industrial spur, and therefore subways would not be necessary.

Under present street traffic conditions, there is greater danger to life and limb, both of pedestrian and auto passengers, in the ordinary traffic of a busy street, than at a level railway crossing where train movements are infrequent and at a low rate of speed.

In the province of Ontario in 1923 there were 236 fatal and 2,348 non-fatal accidents from motors, motor-cycles and trucks. In the same period there were 117 fatal and 202 non-fatal accidents from railroads. This danger of street traffic must always be present, so long as persons unskilled, or of careless temperament, drive cars. A subway adds to the ordinary danger of the street, therefore subways should be avoided, so far as that can be done consistently with the public convenience and safety.

A subway is a detriment to the business interests of the street which passes through it. It breaks the continuity; to the great detriment of business on either one side or the other of it. This is largely because the subway practically kills business for the whole of its length. By the city plan the Bloor street and Davenport road subways would each be over 800 feet in length and the St. Clair avenue subway over 1,000.

The Newmarket subdivision of the National and the double track lines of the Canadian Pacific Railway and National parallel each other at a distance of 1,300 feet at Bloor street and of 2,800 feet at St. Clair avenue. On Bloor the ends of the subways would be only 550 to 600 feet apart. On Royce, Davenport road and St. Clair avenue, they would be from 1,800 to 1,900 feet. Subways so near together would not only destroy the value of the property fronting on them, but would seriously lessen the value of the intervening property as well. This decrease of value could not be taken into account in considering damage claims; the property owners would simply have to suffer the loss.

The distance between Bloor street and Royce street is 3,150 feet. Three streets parallel to Bloor and Royce serve the area between. The centre one of the three, Wallace avenue is the only one now opened through and crossing the Newmarket tracks. If through traffic is to move over the Newmarket subdivision as at present, and Wallace avenue is left open and without a subway as contemplated, the danger and inconvenience now complained of will remain, so far as it is concerned. The alternative is to close Wallace and block all cross travel between Bloor and Royce, or construct an additional subway

across the Newmarket tracks on Wallace, with no corresponding subway across the double tracks.

The proposed subway at the Davenport road crossing of the Newmarket tracks is entered on its westerly side close to the railway right of way, and therefore at the maximum depth of the subway, by Station road which is only half the width of an ordinary street. The driver of an automobile in the Davenport road subway could not see the near approach of an automobile by way of Station road, neither could a driver on Station road see an automobile in the Davenport subway. The point of junction of Station road with the Davenport subway would be from seven to nine feet below the surface level; the depth depending upon the elevation of the tracks and on the clearance allowed in the subway. With possibly hundreds of automobiles passing through the subway in a day, it would be impossible to estimate the danger incurred, but it must be immeasurably greater than an ordinary level railway crossing having only a moderate movement of traffic.

At the proposed St. Clair subway under the Newmarket tracks a like condition prevails to that at Davenport road. Station road enters the St. Clair subway from the east under precisely similar circumstances, and necessarily with similar consequences. Caledonia street also enters the subway but from the west, practically doubling the danger.

Instead of removing danger at the crossings of Davenport road and St. Clair avenue, the construction of subways as above described creates a new danger, greatly in excess of that at present existing, and immeasurably greater than would result from leaving the crossings as they are if the through railway traffic were altogether diverted from that line.

By routing all through traffic, now going over the Newmarket Subdivision, by way of the National main line, there would only be a switching movement on that subdivision to meet the requirements of the industries served by it. With traffic so limited, it would be possible and proper to open Paton road and Antler-Lappin avenues, as well as Wallace, across the Newmarket tracks and thereby and greatly to the convenience of residence and business on these streets on both sides of the tracks. In order that there might be neither inconvenience nor danger resulting, it would be possible to restrict switching movements to certain hours in early morning, mid-forenoon, mid-afternoon and late at night, so that there would be absolute assurance of no interference with the street traffic during hours when such traffic might be congested or urgent.

The cost of the connection or cut-off proposed by Mr. McLeod is placed by him at \$810,000, including land damages. The construction of four subways under the Newmarket Subdivision with land damages, is estimated by the city to cost roughly \$1,800,000. If a subway at Wallace avenue is added, the cost would be increased by \$167,000, making a total of nearly \$2,000,000.

If the public safety or convenience demanded the expenditure of the larger sum required for subways under the Newmarket track, that must be accepted as sufficient reason for its being spent. But, believing that the safety and convenience of the public would be better served by diversion of the traffic, I do not consider that an order should be made that would compel the larger expenditure.

For the foregoing reasons I would respectfully recommend that the judgment of the Chief Commissioner be varied in that part relating to the Newmarket Subdivision, to read as follows:—

1. That the National Railways construct a connection between the Newmarket Subdivision and the double track main line of the Canadian National Railway, west of St. Clair avenue, according to plan and profile shown by Mr. McLeod.

2. That after such construction no through traffic be allowed to pass over the Newmarket Subdivision between Toronto Union Station and the junction west of St. Clair avenue.

3. That there be no switching movements on the Newmarket Subdivision except during certain hours in early morning, mid-forenoon, mid-afternoon and late at night, as shall be fixed by an Order of this Board, and that under no circumstances shall an engine or car remain stationary on any street crossing for more than such number of minutes as may be permitted by standing order of the Board.

4. That the railway consents to Paton road being opened across the track of the Newmarket Subdivision and that connection between Antler and Lappin avenues also be permitted to be made across that track, if and when the city so requests.

OTTAWA, May 9, 1924.

ORDER No. 35021

In the matter of the complaint of Lindsley Brothers Canadian Company, Limited; Mankin Lumber & Pole Company; The Christian Community of Universal Brotherhood, Limited, Salmon Valley Lumber & Pole Company Branch; The Independent Lumber & Pole Company,—against the rates charged on lumber and fence posts by the Great Northern Railway Company from stations south of Nelson, British Columbia, to points on the Canadian Pacific Railway, via Nelson.

File No. 2622.1

FRIDAY, the 2nd day of May, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

HON. FRANK OLIVER, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Nelson, December 3, 1923, the complainants, the Great Northern Railway Company, and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board declares: That the provision in item No. 4, on page 72 of the Great Northern Railway Company's Tariff C.R.C. No. 1800, for an arbitrary over the Nelson rate of 3 cents per 100 pounds, applying on posts, rails, poles (for fencing purposes), stulls, lagging, poles, props (for mining purposes), in carloads, from Salmo, British Columbia, or points taking the same rates as shown on pages 11 and 12 of the said tariff, between the dates of August 1, 1922, and February 21, 1923, inclusive, was an error contrary to the authority granted under the general order of the Board No. 366.

And the Board therefore orders: That the Great Northern Railway Company be authorized to make a refund of the difference between 3 cents and 2½ cents per 100 pounds with respect to any shipments of the traffic described moving during the said period from August 1, 1922, to February 21, 1923, inclusive.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 400

In the matter of the rates on ex-lake grain when milled, bagged, cleaned, or clipped at lake ports or in transit and reshipped to Montreal, Quebec, and Atlantic seaboard ports for export.

File No. 8641.37

WEDNESDAY, the 14th day of May, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon considering the submissions of certain milling companies and the representations made on behalf of the Canadian National and the Canadian Pacific Railway Companies,—

The Board orders: That all railway companies subject to its jurisdiction who publish tariffs containing rates on ex-lake grain when milled, bagged, cleaned, or clipped at lake ports or in transit and reshipped to Atlantic seaboard ports for export shall, effective not later than May 26, 1924, amend the said tariffs by publishing the following rates, namely:—

(1)	From	To	Rates in cents per 100 pounds
Collingwood, Ontario.....	Montreal, Quebec.....		17½
Depot Harbor, Ontario.....	Quebec, Quebec.....		
Goderich, Ontario.....	St. John, New Brunswick.....		
Midland, Ontario.....	West St. John, New Brunswick.....		
Port Colborne, Ontario.....	Halifax, Nova Scotia.....		18½
Port McNicoll, Ontario.....	Portland, Maine.....		
	Boston, Massachusetts.....		
	East Boston, Massachusetts.....		
Tiffin, Ontario.....	New London, Connecticut.....		

The rates named above to apply on carload shipments of grain milled, bagged, cleaned, or clipped at shipping points specified; also on carload shipments ex-lake when milled, bagged, cleaned, or clipped in transit at other stations within Canada, and to include stop-off charge of 1 cent per 100 pounds, but exclusive of charge for out of line haul, if any.

(2)	To	From	Rates in cents per 100 lbs.	
			Grain Flour	Other Grain Products
Baltimore, Maryland.....	Collingwood, Ontario.....		22	23
	Depot Harbor, Ontario.....		24½	25½
Philadelphia, Pennsylvania.....	Goderich, Ontario.....		21	22
New York, New York.....	Midland, Ontario.....		22	23
Weehawken, New Jersey.....	Port Colborne, Ontario.....		18½	19½
	Port McNicoll, Ontario.....		22	23
	Tiffin, Ontario.....		22	23

The rates named above, plus stop-off charge of 1 cent per 100 pounds, and charge for out of line haul, if any, will also apply on carload shipments of grain, ex-lake, milled, bagged, cleaned, or clipped in transit at other stations within Canada.

F. B. CARVELL,
Chief Commissioner.

In the matter of the rates on ex-lake grain when milled, bagged, cleaned, or clipped at lake ports or in transit and reshipped to Montreal, Quebec, and Atlantic seaboard ports for export.

File 8641.37

BY THE BOARD:

Submissions were recently made to the Board by some of the milling companies with regard to rates on grain products milled from ex-lake grain and shipped to Montreal, Quebec, and Atlantic seaboard ports for export. The matter has also been the subject of conferences between the Board and representatives of the Canadian National and Canadian Pacific Railways. After giving very careful consideration to the submissions of the milling companies and the representations of the railway companies the Board has decided to direct the following reductions in the rates on ex-lake grain when milled, bagged, cleaned, or clipped at lake ports or in transit and reshipped to Atlantic seaboard ports for export.

From	To	Rates in cents per 100 lbs.	
		Present	Proposed
Collingwood, Ontario.....	Montreal, Quebec.....	18	17½
Depot Harbor, Ontario.....	Quebec, Quebec.....		
Goderich, Ontario.....	St. John, New Brunswick.....		
Midland, Ontario.....	West St. John, New Brunswick.....		
Port Colborne, Ontario.....	Halifax, Nova Scotia.....	19½	18½
Port McNicoll, Ontario.....	Portland, Maine.....		
Tiffin, Ontario.....	Boston, Massachusetts.....		
	East Boston, Massachusetts.....		
	New London, Connecticut.....		

The rates named above to apply on carload shipments of grain milled, bagged, cleaned, or clipped at shipping points specified; also on carload shipments ex-lake when milled, bagged, cleaned, or clipped in transit at other stations within Canada and to include stop-off charge of 1 cent per 100 pounds, but are exclusive of charge for out of line haul, if any.

To	From	Rates in cents per 100 lbs.			
		Grain and flour		Other grain products	
		Present	Proposed	Present	Proposed
Baltimore, Md.....	Collingwood.....	24	22	25	23
Philadelphia, Pa.....	Depot Harbor.....	26½	24½	27½	25½
New York, N.Y.....	Goderich.....	22½	21	23½	22
Weehawken, N.J.....	Midland.....	24	22	25	23
	Port Colborne.....	20	18½	21	19½
	Port McNicoll.....	24	22	25	23
	Tiffin.....	24	22	25	23

The rates named above, plus stop-off charge of 1 cent per 100 pounds and charge for out of line haul, if any, will also apply on carload shipments of grain, ex-lake, milled, bagged, cleaned, or clipped in transit at other stations within Canada.

A. D. CARTWRIGHT,
Secretary.

May 14, 1924.

GENERAL ORDER No. 401

In the matter of the Rules and Regulations Governing the Construction and Filing of Freight and Passenger Schedules with the Board.

File No. 606

THURSDAY, the 15th day of May, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Whereas General Order No. 177, dated January 10, 1917, requires that tariffs of freight rates from points in the United States to points in Canada shall include, or be supplemented by, a rule to the effect that the said rates, unless specifically indicated as being competitive, will apply to intermediate points in Canada not enumerated in the said tariffs;

And whereas the provisions of the said General Order No. 177 have now been published in Circular No. 204, approved by General Order No. 398, dated April 11, 1924—

The Board therefore orders: That the said General Order No. 177 be, and it is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 402

In the matter of the consideration of the question of the adoption of Rules and Regulations for Safety Appliances on electric locomotives in road and switching service.

File No. 9610.1

MONDAY, the 19th day of May, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

In pursuance of the powers vested in it under sections 34 and 287 of the Railway Act, 1919, and of all other powers possessed by the Board in that behalf; and upon reading the representations filed on behalf of the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Locomotive Engineers, the Railway Association of Canada, the British Columbia Electric Railway Company, Limited, Michigan Central Railroad Company, Canadian National Railway Company, Oshawa Railway Company, Canadian Pacific Railway Company, and the London and Port Stanley Railway Company,—

The Board orders: That the railway companies subject to the jurisdiction of the Board adopt and put into force, not later than the 30th day of June, 1925, the Rules and Regulations for Safety Appliances on Electric Locomotives in Road and Switching Service, attached hereto marked "A".

F. B. CARVELL,
Chief Commissioner.

RULES AND REGULATIONS FOR SAFETY APPLIANCES ON ELECTRIC LOCOMOTIVES IN ROAD AND SWITCHING SERVICE

SPECIFICATIONS COMMON TO ALL ELECTRIC LOCOMOTIVES

Box Steps.—Steps with back stops, generally similar to those specified for steam locomotives, shall be provided for getting on and off locomotives.

Electric Headlights.—Electric locomotives shall be equipped with power headlights the same as for steam locomotives. They shall also be equipped with a bell not less than thirty (30) pounds minimum in weight, with an automatic bell ringer attachment, also a strong sounding (chime) air whistle.

Brakes.—Electric locomotives shall be equipped with good serviceable power brakes, also with efficient hand brakes, which will operate in harmony with the power brakes.

Signal Lamps.—Locomotives to be equipped with classification and marker lamps, and marker lamp holders and brackets, as per standard operating rules.

Uncoupling Levers.—Number.—Two (2) double levers, operating from either side.

Dimensions.—Levers shall extend across the end of the locomotive frame not more than twelve (12), preferably nine (9), inches from the side of the frame, with a guard bent on the handle to give not less than two (2) inches clearance around the handle.

Location.—One on each end of the locomotive.

Application.—Uncoupling levers shall be securely fastened with not less than one-half inch bolts or rivets, and to be so arranged that it can be operated from the ground.

Couplers.—Locomotives shall be equipped with automatic couplers at both ends, as specified by M.C.B. Regulations, providing 12 inches additional clearance between block, or end sill, and inside face of closed knuckle on locomotives in switching service handling passenger equipment.

BOX TYPE OF ELECTRIC LOCOMOTIVE OPERATED BY PANTOGRAPH ON MAIN LINE SERVICE

Box type of electric locomotives to be equipped with two running boards on the roof, one on each side running from each end of roof to pantograph; width of running boards to be not less than 10 inches on new equipment, or on old equipment, where possible, and an iron hand railing, amply secured, with a minimum of 6 inches high, to be installed above the running board, or in case there is no running board, above that portion of the roof to which the hand railing is attached.

Platforms.—In all cases where box type locomotives are built with extension or open platforms, they shall be equipped with platform hand rails not less than 30 inches high. Vertical and horizontal handholds shall be attached to the body of the locomotive the same height as the end railing, with a minimum clearance between the body of the locomotive and the handhold of not less than two inches.

Pilots.—Road locomotives shall be equipped with strong efficient pilots at each end, attached to the frame of the locomotive or truck, and well braced from the heel to the frame of the locomotive, projecting twenty-four and one-half (24½) inches from the heel of the pilot to the nose. Pilots to be provided with

footboards attached to the pilot on each side of the couplers, not less than seven (7) inches in width and a minimum of fourteen (14) inches in length. If made of wood, they shall not be less than one and one-half ($1\frac{1}{2}$) inches thick, with a back stop four (4) inches above tread.

Uncoupling Levers.—The same as specified for steeple type of electric locomotives,—number, dimensions, location, and application of the same.

Pilot Handholds.—The same as steeple type of electric locomotives in regard to the number, dimensions, location, and application.

BOX TYPE OF LOCOMOTIVE USED IN TUNNEL AND SWITCHING SERVICE WITH NON-PLATFORM ENDS

Shall be equipped the same as box type of locomotive, with the exception of pilots. Footboards shall be provided the same as for steeple type of locomotive. They shall also be equipped with an end ladder at one end, located on the left side, giving easy access from the end door of the locomotive to the roof of same.

Two or four wrought iron bracket steps shall be provided, one on each side of the coupler, not less than five (5) by five (5) by one-half ($\frac{1}{2}$) inch, bolted or riveted with one-half inch bolts or rivets, to the end sill or plate of the locomotive, located approximately fourteen (14) inches from the centre line of the coupler and two (2) inches below the centre line of the coupler.

A bracket step shall be provided to the entrance to the end door approximately three feet four inches (3' 4") in length by seven (7) inches wide.

Horizontal handholds shall also be provided on the end sill of the locomotive, made of one inch minimum diameter iron, the one on the right to be not less than twenty-two (22) inches in length, the one on the left to be approximately thirty-eight (38) inches in length, to be continued along the side of the locomotive for two feet five inches (2' 5"), supported by bolts or rivets one-half inch in diameter. The handhold on the left side to be supported by three bolts or rivets, two of which will be on the end sill, the second one to be ten (10) inches from the side of the locomotive. The inside end of the handholds to be located about three (3) feet from the side of the housing.

Two handholds also to be provided, one on each side of the door, not less than five feet five inches (5' 5") in length, made of one inch diameter iron, with two-inch clearance between the end of the locomotive and the handhold; also two horizontal handholds, not less than two feet six inches (2' 6") in length, one (1) inch in diameter, below the window, located approximately two (2) feet seven (7) inches above the floor level.

STEEPLE TYPE OF ELECTRIC LOCOMOTIVE

Protecting Rail.—Open platforms on steeple type of electric locomotive shall be protected by a railing made of a minimum size of one and one-quarter ($1\frac{1}{4}$) inches outside diameter iron pipe securely fastened to the locomotive frame, and shall be not less than forty-one (41) inches high. If possible, this railing shall be continuous across the back end over the coupler. This railing must be supported by not less than three uprights on the back (this includes the two corner side uprights) and at least one upright on the blind side of the motor. If there are two doors on each side of the motor housing, side railing must be run to within two feet of the cab, the end upright forming a handhold for steps giving access to cab doors.

Handholds.—Two vertical handholds shall also be provided on the sides of the motor cab, with a two-inch clearance, made of one inch iron running from the frame of the locomotive to the same height as the railing.

Footsteps.—Footsteps shall also be provided at all openings to motor house doors. These steps to be two or three in number—wood or iron—; the height of the lower step from the rail to be not more than twenty-two (22) inches; all footsteps to be equipped with four-inch risers attached to back of tread. *Sillsteps* exceeding twenty-one (21) inches in depth shall have additional treads, and shall be securely fastened to the frame of the locomotive by not less than one-half inch bolts or rivets. *Handholds* and *Sillsteps* shall also be provided near each end on the sides of the locomotive. The length of tread of sillstep shall be not less than twelve (12) inches by seven (7) inches in width, the same to be provided with risers not less than four (4) inches in depth. *Handholds* made of three-quarter ($\frac{3}{4}$) and seven-eighths ($\frac{7}{8}$) inch round iron, preferably seven-eighths ($\frac{7}{8}$), securely fastened to the frame of the locomotive, to be located over the rear sillstep, and as nearly central with the steps as it is possible to get them, with a clearance of two inches between the frame and the handhold.

Footboards.—Number.—Two or more. Dimensions.—Minimum width of tread ten inches wood. Minimum thickness of tread one and one-half inches, preferably two inches. If cut in centre, inner ends must be protected by risers. Minimum height of backstop, four inches above tread. Footboards to be supported by four wrought iron brackets, not less than three-quarters by three inches ($\frac{3}{4}$ x 3"). Height from top of rail to top of tread, not more than twelve (12) nor less than nine (9) inches.

Location.—At both ends. Where locomotives are used in both switching and main line service, they shall be equipped with a pilot, which shall also be equipped with two footboards, one on each side of the coupler, or pilot, not less than seven (7) inches in width and a minimum of fourteen (14) inches in length. If made of wood, the same shall be not less than one and one-half ($1\frac{1}{2}$) inches thick with a back stop four inches above tread.

Pilot Handholds.—Number.—Two.

Dimensions.—Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel. Minimum clear length, fourteen (14), preferably sixteen (16), inches. Minimum clearance two inches.

Location.—On the end of engine frame. If uncoupling lever extends across the end of the locomotive and is seven-eighths ($\frac{7}{8}$) of an inch or more in diameter, securely fastened, with a clearance of two inches, it is a handhold.

Application.—Pilot handholds shall be securely fastened with not less than one-half inch bolts or rivets.

ORDER NO. 35108

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its main line, as revised, between mileage 14 and 17.05 Mountain Subdivision, in the Province of British Columbia.

File No. 32601

MONDAY, the 19th day of May, A.D, 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit—

The Board Orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its main line, as revised, between mileage 14 and 16 Mountain Subdivision, in the province of British Columbia; Provided the operation of trains over the said line be limited to a speed not exceeding fifteen miles an hour.

F. B. CARVELL,
Chief Commissioner.

Re Demurrage Penalties assessed by the Canadian Car Demurrage Bureau under General Orders Nos. 201 and 349.

File 1700

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the period of twelve months, March 1, 1923, to February 29, 1924.

(Note.—First two days over free time, \$1 per day; three days or more, \$5 per day.)

EASTERN CANADA

Month	Total cars handled	Released within free time		Held over free time		Held under three days over free time		Held three days or more over free time	
		Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
1923									
March.....	186,618	171,894	92.11	14,724	7.89	11,045	5.92	3,679	1.97
April.....	190,231	175,678	92.35	14,553	7.65	10,632	5.59	3,921	2.06
May.....	198,040	182,078	91.94	15,962	8.06	11,887	6.0	4,075	2.06
June.....	202,627	186,113	91.85	16,514	8.15	12,028	5.94	4,486	2.21
July.....	197,310	181,940	92.21	15,370	7.79	11,251	5.702	4,119	2.088
August.....	205,016	190,829	93.08	14,187	6.92	10,688	5.21	3,499	1.71
September.....	192,042	178,311	92.85	13,731	7.15	10,367	5.4	3,364	1.75
October.....	218,429	203,488	93.16	14,941	6.84	11,576	5.3	3,364	1.54
November.....	191,022	177,822	93.09	13,200	6.91	10,130	5.303	3,070	1.607
December.....	160,683	148,760	92.58	11,923	7.42	8,958	5.575	2,965	1.845
1924									
January.....	156,025	144,822	92.82	11,203	7.18	8,218	5.27	2,985	1.91
February.....	168,054	157,450	93.69	10,604	6.31	8,272	4.923	2,332	1.387
Average mthly.	188,841	174,932	92.63	13,909	7.37	10,421	5.52	3,488	1.85

WESTERN CANADA

Month	Total cars handled	Released within free time		Held over free time		Held under three days over free time		Held three days or more over free time	
		Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
1923									
March.....	75,003	69,795	93.19	5,108	6.81	4,229	5.64	879	1.17
April.....	64,935	60,850	93.71	4,085	6.29	3,239	4.99	846	1.3
May.....	60,929	56,920	93.42	4,009	6.58	3,307	5.43	702	1.15
June.....	58,665	55,867	95.23	2,798	4.77	2,182	3.72	616	1.05
July.....	57,923	54,216	93.60	3,708	6.40	3,049	5.26	658	1.14
August.....	69,331	65,331	94.23	4,000	5.77	3,273	4.72	727	1.05
September.....	112,296	107,007	95.29	5,289	4.71	4,298	3.83	991	.88
October.....	150,950	143,810	95.27	7,140	4.73	5,994	3.97	1,146	.76
November.....	147,506	139,452	94.54	8,054	5.46	6,977	4.73	1,077	.73
December.....	128,535	121,157	94.26	7,377	5.74	6,231	4.85	1,146	.89
1924									
January.....	88,620	83,214	93.90	5,406	6.10	4,462	5.035	944	1.065
February.....	81,209	74,712	92.0	6,497	8.0	5,197	6.4	1,300	1.6
Average mthly.	91,325	86,036	94.21	5,289	5.79	4,370	4.78	919	1.01

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, June 15, 1924

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Application of the town of Laval, P.Q., for the installation of a public crossing at Rousseliere Street, Laval, P.Q., over the tracks of the Canadian National Railways.

File 30506

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner:*

This case was heard by the Board in Montreal in the month of June last, and as I view it, the important question to decide is whether or not the existing crossing over the tracks of the Canadian National Railway at De la Rousseliere street in Pointe aux Trembles is senior to the Canadian National Railways or not. Unfortunately, at the hearing very little documentary evidence was produced by either party and the Board was not in a position for some time to give the matter intelligent consideration. Since then, a number of documents have been produced referred to herein, which I think leaves the question entirely free from doubt.

Prior to 1895 or 1896 a Mr. Andre Brisset was the owner of two lots of land at Pointe aux Trembles, Nos. 208 and 209, extending from the St. Lawrence river northeasterly to the rear of the farm, and it seems that about that time a chapel was erected on lot 208, a short distance north of the present location of the Canadian National Railways, formerly the Chateauguay and Northern, and according to the evidence the chapel was completed and blessed in the year 1896, the exact month not being given.

It is also stated by a Mr. MacDuff, an old resident of that portion of the community that before construction of the chapel, "a Way of the Cross had existed at or near the present location of the chapel." His evidence on this point will be found in Vol. 404, page 1812:

"(Q.) You cannot state the year in which that was built, but you are sure that the public circulates there since that time?—(A.) Yes.

"(Q.) It is a place of pilgrimage for the catholics?—(A.) Yes.

"(Q.) Since the Way of the Cross has existed?—(A.) Yes. I have

worked myself at the construction of that Way of the Cross,"—and it seems to be pretty well established from the evidence of Mr. MacDuff that the public had travelled from Notre Dame street to the Way of the Cross over the land of Mr. Brisset and probably along what is now claimed to be a street.

This idea is also borne out by the evidence of Rev. Father Debuzau, as found on page 1820 as follows:

"(Q.) Before the chapel was built was there any way across?—(A.) There was simply the road for the use of the farmer.

"(Q.) No, but a religious building?—(A.) No, no, there was no religious building before the chapel was built.

"(Q.) 1896, and since then has the public used what is to-day Rousseliere street to go to your place?—(A.) Yes.

"(Q.) Ever since?—(A.) Ever since, and it was the only way to have access to our chapel, and all those that came, and there were thousands, came only by that road.

"(Q.) And, as far as you know, since the railway was built has the public crossed Rousseliere street?—(A.) Yes."

Mr. Jacques Leonard, another old resident of the community gave evidence along the same lines, as found on pages 1824 and 1825.

It therefore seems clear to me from the evidence up to this point, that the public travelled over what is now claimed to be a street, at least since 1896, and possibly to some extent, before that in going to the Way of the Cross, although the date and number of years are so obscure that it would be impossible to arrive at any definite conclusion upon that phase of it.

Since the hearing, the Canadian National Railways have produced solemn declaration from Mr. John Rowley, an engineer, who was superintendent of construction for the Montreal Terminal Railway, and he seems to have such intimate knowledge of the question at issue that I am quoting it in full, as follows:—

"I, John Rowley, of the city of Montreal, in the province of Quebec, engineer, do solemnly declare as follows:—

"(1) I have a personal knowledge of the crossing of the Montreal Street Railway and the Canadian Northern Quebec Railway in the town of Laval de Montreal now known as Rousseliere street.

"(2) In the year 1896 I was superintendent of construction for the Montreal Terminal Railway and constructed the line from Montreal East through Pointe aux Trembles Ward.

"(3) The right of way at the point in question was purchased by the Chateauguay and Northern Railway from Andre Brissette in the year 1896, and when the line was constructed a farm crossing was established by me with farm crossing gates at the point where Rousseliere street now abuts on the said right of way.

"(4) In the year 1900, the said Andre Brissette, who was the owner of lots 208 and 209 in Points aux Trembles Ward deeded to the Montreal Terminal Railway Company a strip of land 30 feet in width on lots 208 and 209 from the right of way of the company to the Chapel de la Reparation, which was constructed on lot 208, with sufficient land on the said lots to permit it to build two wyies, one at the right of way and another at the chapel.

"(5) Since the year 1896 I have on many occasions passed the farm crossing in question, and to my knowledge it has never been a public highway, but on the contrary there have always been farm crossing gates at this point.

"(Sgd.) JOHN ROWLEY."

We have since been furnished with a certified copy of a deed dated 15th day of June, 1896, by which Mr. Brisset conveyed to the Chateauguay and

Northern Railway Company, the predecessors in title of the Canadian National Railways, a right of way across lots 208 and 209, for the sum of \$159, the said right of way measuring 910 feet in length more or less, and 75 feet in width, giving a warranty deed and without any reservations whatever and making no reference to a highway thereon. We have also been furnished with a copy of a deed dated the 4th day of May, 1900, by which the same Mr. Brisset conveyed to the Montreal Terminal Railway Company a piece of land 30 feet wide extending northwesterly from the line of railway then owned by the Montreal Terminal Railway Company along the dividing line between lots 208 and 209, 24 arpents being 10 feet off the easterly side of lot 208, and 20 feet off the westerly side of lot 209. This strip of land was expressly conveyed for the purpose of allowing the Montreal Terminal Railway to construct two wyes or curves, as they are called, in the deed, by which they could turn north from their constructed line which is just north of the Canadian National Railway line, and go up the 24 arpents to the chapel, and is exactly on the land now claimed by the applicants as a street, although, of course, it made no reference to that portion of the alleged street over the Canadian National Railway right of way.

In this deed, the grantor Brisset, agreed that he would "neither cede, sell nor rent on all the extent of said lots Nos. 208 and 209 any right of way to any railway company, steamboats, omnibus or other public vehicles," and also made the following statement: "However, if in consequence of the subdivision of the said two lots, or otherwise, a public road was to be built, the party of the first part will not be responsible to the party of the second part for the transportation of passengers who should not be favoured by same."

I have searched in the office of the Minister of Railways in which location plans were deposited before the creation of this Board, and I there find a plan of the Chateauguay and Northern Railway dated the 21st day of October, 1897, certified by Collingwood Schrieber, Deputy Minister, the 7th day of February, 1898, showing the location of the railway from Prefontaine street, Montreal, to Charlemange, a distance of 12 miles, on which it purports to show all public streets in the vicinity of the right of way. Notre Dame street is marked on the whole length of the plan running parallel with the right of way and for some miles, very close to the same. In Maisonneuve, in the city of Montreal, a number of streets are shown crossing the right of way and in the parish of Longue Point there is a highway on the northwestern side of lot 389 extending back from the village of Longue Point. The next highway is between lots 88 and 89 running from the public road northwesterly, and the next is near Bout de L'Ile, where there is a road crossing the right of way between lots 232 and 233 and on this plan there is no reference to any roadway of any kind over the right of way between lots 208 and 209. I find that in the year 1907 the Canadian Northern Quebec Railway, successors to the Chateauguay and North, filed a plan with the Board of their right of way from mile 0 to mile 36.15, prepared by Senator J. P. B. Casgrain, showing the location of Notre Dame street, the Canadian Northern Quebec Railway, and the Montreal Terminal Railway. On this plan the highway roads are shown practically the same as on the former plan herein described, but here again, no reference is made to any highway or right of way between lots 208 and 209.

I therefore think there is no doubt whatever, that no actual highway existed down as late as 1907 and if the public have any rights at all over the right of way of the Canadian National Railway at the point in question, it must be found by dedication or prescription. The evidence seems to be that the public travelled to the Way of the Cross for some time prior to 1896, and continued doing so down to the time when the passage way was closed up by the railway company a few months ago. It is also very evident that when the present rail-

way was built, gates were erected across the way now claimed to be a road by the railway company, and while the evidence is not clear, yet I have no hesitation in finding that they were farm gates in the proper sense of the word.

Father de Buzau states that there was a farm road there for the use of the farmers and practically all the witnesses admit the gate was there, although they claim it was very rarely closed.

The city did not contend that a public street exists because in 1917 and 1918, when purchasing lots to widen the way to the full width of the street, they only purchased up to the side of the right of way and from all this evidence, I am forced to the conclusion that no public highway exists either by deed, grant, dedication or user by the public; that the way originally was a farm road used by Mr. Brisset and travelled, as often happens in country districts as it was then, by the public in obtaining access to the chapel; that when the railway was constructed, farm gates were erected as was usual, and as the railway company purchased the property during the same year as the chapel was constructed, there could be no right of prescription obtained over the railway right of way after that date, and there is no evidence of sufficient usage before that date to give any rights to the public.

I therefore think the application should be dismissed; but as a street at that point seems to me to be necessary; at least for access to the chapel, which last year was visited by 67,000 pilgrims, a highway crossing should be granted just as soon as the town of Laval takes the necessary steps to legally create a public highway over that portion of the Canadian National Railway by by-law or whatever other procedure may be necessary under the laws of the province of Quebec. When this has been done, if an application is made to the Board to create a public crossing, I think the same should be granted, and on that application, all questions of protection, if necessary, can be decided.

May 15, 1924.

Deputy Chief Commissioner Nantel and Commissioner Lawrence concurred.

Application of the city of Montreal, P.Q., to extend Baby Street, in the city of Montreal, across the right of way of Canadian Pacific Railway Company.
File 28895.

JUDGMENT

HON. F. B. CARVELL, K.C., *Chief Commissioner:*

In 1919, the city of Montreal made an application to this Board to extend Baby street, Montreal, as a level crossing across the right of way of the Canadian Pacific Railway.

The case was heard at Ottawa on the 4th day of November, 1919, and shortly thereafter an inspection was made by Mr. A. A. Belanger, our Assistant Engineer, in which he found "there does not appear to be an immediate public necessity for a level grade crossing at this point." This report was concurred in by Mr. G. A. Mountain, our Chief Engineer, also by Mr. E. C. Lalonde, then our Chief Inspector, and as the city and Canadian Pacific authorities agreed to enter into negotiations over the same, no further action was taken until June of 1923, when the case was reheard at a sittings held in the city of Montreal.

The city produced a number of witnesses to prove the necessity for access from one side of the Canadian Pacific Railway tracks to the other, which at this point run practically north and south from the Outremont yards to the

Rivière des Prairie, and according to the evidence, the nearest crossing to the north of Baby street is the Cremazie road, a distance of 6,300 feet; and to the south Lannes street, a distance of 2,800 feet, or a total distance of about $1\frac{3}{4}$ miles.

I think it would be admitted that the great majority of traffic from that particular portion of the city of Montreal must be south, because that would bring the traffic into Park avenue on which there is a level crossing on the track between Outremont yards and the line running north, and a subway under the track running from Place Viger station northwesterly by Outremont yard. Nevertheless, there must be considerable traffic moving east and west across the railway track according to the evidence of the different witnesses, which briefly summarized, is as follows:—

Rev. Father Beaulac, parish priest of the parish of Ste. Cecile, whose church would be near Baby street on the eastern side of the tracks, claimed that many children would attend the school at his church and people would attend the church if there was any way of getting across the tracks. He also claimed there was no Catholic church on the western side of the tracks and they were compelled to go south over the Park avenue level crossing which was often congested with shunting operations and the distance to get to his church was too great.

Dr. Poulin, a practising dentist, showed the difficulties of the people in not being able to cross the track and thought if this street were opened up, there would be heavier traffic than on either street now opened, north or south.

Rev. Brother Jalbert, of the Deaf and Dumb School, showed the difficulties they had in carrying on their institution, on account of the railway tracks.

Mr. Lebel said it would be the main highway to St. Laurent and Model City.

Mr. Lemarche stated the district had grown very fast and this would be the principal highway across the tracks.

Mr. Bourdon and Mr. Paquin gave similar evidence.

The Fire Chief Chevalier, showed the great convenience in cases of fire of getting across the railway tracks over present conditions, and claimed that a subway would be preferable to a grade crossing.

Messrs. Robert and Goyer gave evidence that if this was opened up it would soon become the main highway across from St. Laurent through Model City to Rockland avenue or down by Park avenue and Lannie street.

The railway track in question is on the main line of the Canadian Pacific Railway from Place Viger station to the Rivière des Prairie and on to Ottawa by the north shore of the Ottawa river to mont Laurier and to Quebec, and all passenger trains whether from Place Viger station or Windsor station going to points north of the Ottawa river pass over that portion of the railway traversed by Baby street. According to the statement of the Canadian Pacific Railway there are now 66 trains per day passing over the railway at this point, 38 passenger and 28 freight trains, and as it is just about 300 feet south of the junction with the line into Outremont yard, there must be a great number of engine and shunting movements in addition to these regular trains; and also there are a number of steamship specials and extra trains which are not included in the above number. All passenger trains, with the exception of one, go through at high speed and make no stop before reaching Mile End. Therefore, there is no question that the train movements are numerous, rapid and consequently dangerous, and from all the evidence quoted above, it would seem that once the road was opened across the tracks, the vehicular movements would become very heavy.

For many years, the Parliament of Canada has been voting the sum of \$200,000 annually, to be expended by this Board in removing level crossings heretofore existing, and it has been the policy of the Board not to create any in large centres unless it could not be avoided.

It was admitted by Mr. Butler, representing the city, that gates would be necessary, and as the railway was senior, that the total expense would be upon the city, but it was contended by Mr. Collins, an official of the Canadian Pacific Railway Company, that gates would not be sufficient in this particular instance, claiming that automobiles would go through them and children would go under them. I do not know that the people of Montreal are any different from other portions of Canada where gates are found to be reasonably satisfactory, although in many places, the very things happen as described by Mr. Collins.

Considering the volume of traffic now existing upon the railway which is liable to increase, and the vehicular traffic, which, according to the evidence, will materially increase, and the disinclination of the Board to create new level crossings in large centres, I feel the application should be dismissed.

Considerable discussion took place at the hearing, and since that date, about the construction of a subway. As the city is junior, I think that is a matter which must be decided by the municipal body. It is quite probable, as there is not much building on either side of the right of way at that particular point, a subway could be constructed as cheaply now as at any future time. However, that is a matter which the city must decide for itself.

An order should go dismissing the application.

May 16, 1924.

Deputy Chief Commissioner Nantel and Commissioner Lawrence concurred.

Railway Commissioners for Canada

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Re *Electrification of Marker and Classification Lamps on Locomotives equipped with Electric Headlights*

File No. 6511.8

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner*:

This case is an application by the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen, asking that an order of this board issue directing railway companies under its jurisdiction to install electric lights in all classification lamps on engines equipped with electricity.

It came to the Board in the form of a resolution passed by the general organizations, and was forwarded to the railway companies for their submissions. The replies showed that practically all railways in Canada, excepting the Canadian Pacific Railway, were now using electric lights for classification and, in many cases, marker lamps.

At the hearing, the application seemed to broaden out into one for the equipment of both marker and classification lamps with electric lights.

Mr. Riddell, representing the Railway Association of Canada, was rather non-committal as to the question at issue, but took the ground that the Board should not order a matter of this kind, as it should be one of internal economy of the railway company concerned.

Mr. Flintoft, for the Canadian Pacific Railway Company, took practically the same stand, and also questioned the jurisdiction of the Board to make such an order, on the ground that the installation of electric lamps was not necessary for the protection of property, or for the safety of the employees. He referred to section 287 of the Railway Act, subsections (g) and (l), which would read as follows:—

“287. (1) The Board may make orders and regulations,—

“(g) with respect to rolling stock, apparatus, cattle-guards, appliances, signals, methods, devices, structures and works, including light, heat and power lines or wires, to be used upon the railway, so as to provide means for the due protection of property, the employees of the company, and the public and all persons travelling on His Majesty's service;

"(l) generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public, and of the employees of the company, in the running and operating of trains and the speed thereof, or the use of engines, by the company or on or in connection with the railway."

The Canadian Pacific Railway Company contended that the electrification of engines had not reached the point, from a mechanical standpoint, which, in their judgment, justified them in relying upon this method of lighting their classification and marker lamps; although they admitted they had eighteen hundred locomotives equipped with electric headlights. Their general contention was that the vibration of the engine might cause either a loosening of the lamp in the socket, or a breaking of the wire or connections, producing a short circuit, and thus put the whole lighting system out of action; and offered some evidence in support of this contention.

On the other hand, they had to admit that very little difficulty had arisen from the use of electric headlights.

Mr. Donahue, General Superintendent of the Michigan Central Railroad, contended that from the time he first commenced railroading down to the present time, oil lamps had been found quite satisfactory, and after considerable cross-examination as to the use of electric classification lamps, stated, page 37, "we have had no trouble since the installation of the classification lamps." In fact, I failed to see how they could have any trouble, and from the evidence, I am forced to the conclusion that the troubles from the use of electricity in classification and marker lamps has been so negligible that it would be almost impossible to find any positive evidence along that line. No doubt, there have been cases where wires have broken, or short circuits have been effected, causing temporary disruption of the whole installation, but the instances are so rare that I am prepared to hold that, from a mechanical standpoint, electrification is both feasible and as safe in operation as the oil lamp would be.

There was considerable discussion as to whether the switch should be in the cab or at the lamp, and for the present, I think that should be left with the railway companies to decide. It is stated that a small opening exists at the rear of the classification lamp, and the engineer will always know by looking at it whether the light is burning or not, just the same as he does to-day with the oil lamp.

It, therefore, seems that the application must be decided upon whether or not the installation of these lamps is necessary "for the protection of property, and the protection, safety, and accommodation and comfort of the public, and of the employees of the company, in the running and operating of trains." There can be no argument, whatever, as to the fact that the installation of electric lamps in both classification and marker lamps would add to the accommodation and comfort of the employees of the company. I do not know that it plays much part in the protection of property, in so far as the classification and marker lamps are necessary, generally, for the protection of property on the railway, under the Operating Rules.

Mr. Flintoft practically rested his case from the legal standpoint, on the question of safety, and at the hearing I was rather anxious to see what evidence could be given on that point.

I personally questioned Mr. Best pretty carefully, and the questions and answers thereon will be found on pages 17, 18, and 19 of the evidence.

On page 17, he pointed out that with the oil lamp they had never yet had anything capable of taking care of the burning uniformly without smoking, under all climatic conditions and under all oil conditions; that if a lamp is lighted in a hurry, it will burn up too high, and at other times too low, or it

may go out altogether. If it smokes up, it will indicate to the men in the cab that the light must be burning, or it may be that it would indicate that the lights were out. I then asked the following question:—

“Give us the very best you have. You are telling us what might happen. Does it happen?”

to which he answered as follows:—

“Yes, sir, it does happen; I will not say that it is an everyday occurrence, but it is a frequent occurrence on meeting a train out on the line, for the lights to be out and the attention of the men called to it by the men they meet, that their lights were out, or that one light was out. How frequent that is at the present time I do not know, but I have no doubt it is just as frequent as it used to be, because while there have been improvements made in the burners in such lights and the lights on the locomotives, it has been practically impossible for them to get a burner which will cope with the various climatic conditions encountered, together with the fact that the condition of the oil itself varies as well, the quality of the oil that is being used.

“With the electric bulb in there, there is never any danger of it being smoked up or dirtied on the inside. The amount of dirt that accumulates on the outside is very small as compared with the amount of smoke that collects on the glass which indicates whether the light is burning or not. That is one of the important features in connection with the question of safety.

“There is another difficulty experienced by men going out there and lighting those lamps. Probably when the wind is high they have to go out, or they get an order to display a signal at a certain point; they might be late, or they might not have been prepared for lighting before leaving the terminal. There is always a great deal of hurry in doing that, because there is always somebody waiting. If the fireman goes out in a hurry, he is very liable to fall off. If it is a question of going out, he has another man in his place in a minute. The two go together; when he is in a hurry, there is very much more liability of him slipping and falling. Many accidents have occurred where men have been lighting lights in the front, and have fallen off the running board or the steam chest, or as the case might be.”

In addition to this, Mr. Best pointed out that while it was true the fireman was responsible that his lamp should be in proper condition for being lighted when necessary, yet as a matter of fact a month or more went by without signals being carried, and in the natural course of events, men became careless and when these lamps were required they were not in burning condition.

So far as the records go, we have no specific denial of these positive statements of Mr. Best; and, therefore, I find that the installation of electric lights in classification and marker lamps might add to the safety as well as accommodation and comfort of the employees of the company in the running and operating of trains; although I have to admit that the evidence is not very strong along that line, but I think sufficiently strong to justify such a finding.

Therefore an order should issue directing the Canadian Pacific Railway Company to install electric lights in the classification and marker lamps of all locomotive engines in the service of the company which are now or in future may be equipped with electric light installations, all engines put in service in the future with electric light installations to have the electric light installed in the classification and marker lamps before entering the service, and all engines

now in the service and so equipped to have electric lights placed in the classification and marker lamps not later than the 31st day of December, A.D. 1925.

April 28, 1924.

Deputy Chief Commissioner Nantel and Commissioner Lawrence concurred.

GENERAL ORDER No. 403

In the matter of the application of the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen for an Order directing the railway companies subject to the jurisdiction of the Board to install electric lights in all classification lamps on engines equipped with electricity.

File No. 6511.8

FRIDAY, the 6th day of June, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, February 7, 1923, in the presence of representatives of the applicants, the Canadian Pacific and the Canadian National Railway Companies, and the Michigan Central Railroad Company, and what was alleged,—

The Board orders: That all railway companies subject to the jurisdiction of the Board, install electric lights in the classification and marker lamps of all locomotive engines in service which are now, or in future may be, equipped with electric light installations; all engines put in service in the future with electric light installations to have the electric light installed in the classification and marker lamps before entering the service; and all engines now in service and so equipped to have electric lights placed in the classification and marker lamps not later than December 31, 1925.

F. B. CARVELL,
Chief Commissioner.

Re Order No. 26079, Notre Dame Street Bridge, Montreal, P.Q.

File 27275

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner:*

In the month of May, 1917, by Order No. 26079, the Board ordered the reconstruction of the Notre Dame Street bridge, in the city of Montreal, and decided that the costs thereof should be borne three-quarters by the Canadian Pacific Railway and one-quarter by the Montreal Tramways Commission. The order was silent as to the cost of maintenance, and as it was a wooden bridge, maintenance has become necessary, and the railway company is applying to the Board for an order, distributing the cost thereof among the different parties interested.

It was admitted at the hearing that the street was senior to both the Canadian Pacific Railway Company and the Montreal Tramways Commission. In the application, the Canadian Pacific Railway Company requested that the city be called upon to defray some percentage of the general cost of maintenance, but later on, changed their attitude, so far as the city was concerned, asking that they pay all the cost, of maintaining the wearing surface of the bridge, and that the balance be divided between that company and the Montreal Tramways Commission in the proportion stated above.

The Tramways Commission contended that they were also senior to the railway, having been on the street before the railway was constructed, and also contended that in the beginning they were not called upon to pay any portion of the cost of construction. It was also admitted that the railway runs through a cutting at that point with a bridge from slope to slope. The city contended that as they were senior, they should not be responsible for anything in the way either of construction or maintenance.

It seems to me, the principles governing this case have been so often considered and laid down by the Board that there should be very little difficulty in applying them in this case. It is quite clear that the city was senior and should not be called upon to contribute anything toward the cost either of construction or maintenance of the bridge proper. The same state of facts existed in the King Street, Hamilton, case (file 24499), where the following statements were made and acted upon:—

“In my judgment, as a general principle, when a railway company excavates and cuts away a portion of a highway, they should be compelled to replace that highway by a substructure capable of carrying everything which the earth itself as it then existed would carry, but I do not think they should be held responsible for placing a covering or surfacing on the substructure thus provided of any different construction or durability than that which they found when the road was severed, and, having provided such a structure with such a covering, I then think the burden should be on the municipality to pave it or cover it with any material which, in their judgment, might be necessary to take care of the traffic in that particular locality.”

Therefore, in this case, it seems to me the city should only be called upon to provide by way of maintenance the wearing surface of the bridge. It is not so easy to define this, it being a wooden bridge, as it would be were it one of steel and concrete, but as there are two coverings of plank, the upper and lower, I would treat the upper covering as the wearing surface, and therefore find that the city should be responsible for the maintenance of the upper plank covering, on the principle that had there been no railway cutting, the city would have been compelled to maintain the wearing surface of that portion of its street. If there were no agreement between the city and the Tramways Commission, I should think the city should be responsible for the whole of the wearing surface, subject to any arrangements which they might make with the Tramways Commission, but in this case, under the contract between the city and the commission, the following provision appears:—

“Art. 46.—The company shall maintain within the city, at its expense, clear and in proper repair, that portion of the streets and the pavement which lies between the rails and eighteen inches on each side of the rails, and between the tracks in the streets where there is a double track; and, in default thereof, the city may, with the consent of the commission, do such works at the expense of the company.”

I therefore think as between the city and the commission, the provisions of this agreement should be carried out. As to the general question of main-

tenance outside of the wearing surface, I would follow the principle laid down in the former order, namely, that one-quarter should be borne by the Tramways Commission and three-quarters by the Canadian Pacific Railway Company. I do not think the fact that the street railway was on the street before the construction of the bridge should relieve the Tramways Commission of contributing some portion of the maintenance of this structure; in fact, this is the view taken by the Board on a former occasion, with which I entirely agree.

I therefore think an order should issue providing that so far as general maintenance is concerned one-quarter thereof should be borne by the Montreal Tramways Commission and three-quarters by the Canadian Pacific Railway Company. The top tier of planking which I have herein termed as the "wearing surface" should be maintained by the city and the Montreal Tramways Commission, in accordance with their agreement, namely, the Tramways Commission to maintain that portion within and between their tracks and for eighteen inches on either side thereof, and the balance by the city.
May 13, 1924.

Deputy Chief Commissioner Nantel and Commissioner Boyce concurred.

Application of the Quebec Farmers' Telephone Company for an order directing the Bell Telephone Company to give additional connection at St. Hyacinthe, in the Province of Quebec.

File 3839.511.1

Application of the Bell Telephone Company of Canada for an Order directing the Quebec Farmers' Telephone Company of St. Simon de Bagot, P.Q., to comply with the conditions of its contract dated November 18, 1922.

File 3839.511

JUDGMENT

THE CHIEF COMMISSIONER:

In 1921 an application was made to the Board by the Farmers' Telephone Company of Quebec for connection between its system and the Bell Company at St. Hyacinthe, and at a hearing in Montreal on the 10th of January, 1922, the parties were requested to get together and try and arrive at a working agreement. The result was that an agreement was arrived at between the parties over all matters in dispute, excepting one, as to the electrical hazard, which plays no part in this case, and need not be further referred to.

Finally, on the 18th day of November, 1922, the parties signed a connecting agreement, by which, under clause "D" thereof, it was agreed that on all conversations originating on the Farmers' line into the city of St. Hyacinthe and from St. Hyacinthe to the Farmers' line, the rate should be 10 cents, being the standard minimum rate of the Bell Telephone Company, in each case 6 cents to go to the originating company.

There was also provision for commuting these charges by a study of any one month after the business was in operation. This was done, and on the 22nd of February, 1923, Supplement No. 1 was filed, being an agreement between both companies, by which it was agreed that as a result of a study, hereinbefore referred to, the Farmers' Company was to retain the whole charge on all messages for St. Hyacinthe originating upon the Farmers' line, and the Farmers' line was to receive 3 cents on all messages originating at St. Hyacinthe. On all business originating on the Farmers' line for places on the Bell system other than St. Hyacinthe, the Farmers' Company was to receive 27 cents per message.

The Farmers' Company claim that as they receive the whole of the toll from the business for St. Hyacinthe originating upon their lines, they could

make any arrangement with their patrons which they saw fit, and did make an arrangement by which their patrons could have unlimited service into St. Hyacinthe for a flat charge of \$5 per year, and this, together with the construction of new lines, has so increased the business that the service is unsatisfactory, and the Farmers' line is now asking for an additional circuit between its terminus and the Bell central in the city of St. Hyacinthe.

The Bell Company claims that the increased traffic is largely due to the flat rate charge above referred to, and claim that if the Farmers' Company carry out the contract and make a charge of 10 cents per call to their patrons, the present line is quite sufficient to give a satisfactory service.

I agree with the contention of the Bell Company and think the contract should be lived up to by both companies. If after a reasonable time has elapsed the business of the Farmers' line has increased to such an extent that an additional circuit is necessary, then the Farmers' Company can apply to the Board for such redress as may be considered necessary, but it is my opinion that if the charge is made according to the contract, the number of conversations will be so limited that the present facility will be found quite adequate to render reasonable service.

Therefore, the application of the Farmers' Telephone Company for further connection should be dismissed.

The opinion has already been expressed that if the terms of the contract are carried out there will be no necessity for further connection services, and therefore, the application of the Bell Telephone Company should also be dismissed.

May 13, 1924.

F. B. CARVELL.

Commissioner Boyce concurred.

Application of the city of Hamilton for an Order directing the Toronto, Hamilton and Buffalo Railway Company to furnish proper protection at the intersection of King Street, Hamilton, with the easterly branch of the company's railway in Hamilton.

File 29595

Application of the Toronto, Hamilton and Buffalo Railway Company for an Order directing protection to be furnished at the crossing of the company's Belt Line of Railway in the city of Hamilton by the highway known as Cannon Street East.

File 14696

JUDGMENT

THE CHIEF COMMISSIONER:

When the Board sat in Toronto on the 21st of May last, the city of Hamilton applied for an order directing the Toronto, Hamilton and Buffalo Railway Company to furnish proper protection at their crossing on King street.

At the hearing, the railway company did not protest very vigorously, but claimed that if there was protection at King street, there should also be protection at Cannon street, about 200 yards farther north, to which the city also seemed to agree. The matter was discussed from nearly every standpoint, and at first I thought trains could be flagged across these two crossings, but both the railway companies and the city seemed to think this would not be satisfactory on account of the grades coming from the water front up to the main line of the Toronto, Hamilton and Buffalo Railway. The railway company con-

tended that a flagman would be the most satisfactory form of protection, and that he should be on duty during the hours of steam operation, which are from 9 a.m. to 8 p.m.

I therefore think that a watchman should be appointed by the Toronto, Hamilton and Buffalo Railway Company, at both of these streets, to be on duty between the hours of 9 a.m. and 8 p.m. daily, except Sunday.

It was admitted at the hearing that King street was senior to the railway company, being one of the old highways of the city of Hamilton, and it was also admitted that Cannon street was junior to the railway company. Some question arose as to the actual date of the Cannon street crossing in case gates or bells should be established on account of a proposed contribution from the Grade Crossing Fund. We have, however, since received information from the city that Cannon street was not opened up across the railway track until the 30th of January, A.D. 1911, and therefore, under no circumstances could protection at this point participate in the Grade Crossing Fund. As, however, we are providing for watchmen, this plays no particular part at the present time.

Following well recognized principles, I think the city should contribute something toward the protection of King street, even though it be senior at that point, and I therefore think that the costs of the watchmen in both these cases should be divided as follows: King street, 65 per cent by the railway company and 35 per cent by the city of Hamilton; Cannon street, 35 per cent by the railway company and 65 per cent by the city of Hamilton.

An order should issue accordingly.

June 6, 1924.

F. B. CARVELL.

The Assistant Chief Commissioner and Commissioners Boyce, Oliver, and Lawrence concurred.

Application of the Montreal Tramways Company re crossing at Atwater Avenue, Montreal.

File 32673

JUDGMENT

THE CHIEF COMMISSIONER:

This case was heard at Montreal twice, the first occasion on the 26th of June, 1923, and the second on the 16th of April, 1924.

The Montreal Tramways Commission applied to the Board for the right to cross the Canadian National Railway at grade at Atwater avenue, in the city of Montreal, and at the first hearing a suggestion was made that it might provide a better street car service by opening up the crossing at Atwater avenue, on condition that the Guy street crossing should be closed. The Board proceeded along this idea for some time, and finally the city and the Tramways Commission agreed to the proposal and to leave the distribution of cost in the hands of the Board.

In the month of March last, however, the Canadian National Railways raised the objection that it would be a very serious proposition from the operating standpoint both of the Canadian National Railway and the street railway, and furnished us with a traffic statement for the 14th day of July, A.D. 1923, showing the movements over this piece of their railway, including passenger trains, coach pilots, light engines, etc., as follows:—

A.M.—5-6, 6-7, 7-8, 8-9, 9-10.	P.M.—4-5, 5-6, 6-7, 7-8, 8-9.
6 8 27 22 16	15 11 18 13 15

and when this was furnished, it seemed to me so serious that I at once directed the matter to be set down for hearing at Montreal again, at which all parties were heard.

There was considerable opposition to the removal of the street railway tracks on Guy street, but the principal objection came from the Canadian National Railways, who claimed that there would be times in the day when it would be practically impossible to carry on street car movements at all, and from a study of the above figures, I am inclined to agree with them. It must be remembered that this is a four-track road over which all passenger business of the Canadian National Railways to and from Bonaventure station as well as considerable freight movements must pass, and I am afraid that the service, if granted, would be so unsatisfactory, that it would be better to leave matters as they are, and therefore, the application should be refused.
June 6, 1924.

F. B. CARVELL.

Commissioner Boyce concurred.

ORDER No. 35146

In the matter of the application of the Northern Pacific Railway Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff C.R.C. No. 538, on file with the Board under file No. 28379.

THURSDAY, the 5th day of June, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Passenger Tariff C.R.C. No. 538, on file with the Board under file No. 28379, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35153

In the matter of the application of the Corporation of the City of Toronto, in the Province of Ontario, hereinafter called the "Applicant," under Sections 257 and 259 of the Railway Act, 1919, for an Order requiring the Canadian Pacific and the Canadian National Railway Companies to collaborate with the Applicant in the preparation of a joint plan for the separation of grades at the crossings of Bloor Street, Royce Avenue, Weston Road, and St. Clair Avenue by the said railways, and at the crossings of Wallace Avenue and Davenport Road by the Canadian National Railway.

File No. 32453

THURSDAY, the 5th day of June, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*S. J. MCLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*C. LAWRENCE, *Commissioner.*HON. FRANK OLIVER, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, May 21 and 22, 1924, in the presence of counsel for the applicant, the Canadian Pacific and the Canadian National Railway Companies, the Consumers' Gas Company, the Toronto Transportation Commission, the Toronto Electric Light Commission, the Hydro-Electric Power Commission of Ontario, and the Bell Telephone Company of Canada, and what was alleged,—

The Board orders as follows:—

1. That the Canadian Pacific and the Canadian National Railway Companies be, and they are hereby, directed to construct, jointly, two subways, one under the double tracks of the Galt Subdivision and the Toronto, Grey and Bruce Subdivision of the Canadian Pacific Railway Company and the Brampton Subdivision of the Canadian National Railway Company on Bloor street, and one under the said tracks on Royce avenue, in the city of Toronto, province of Ontario.

2. That the Canadian National Railway Company be, and it is hereby, directed to construct a subway under the tracks of its Newmarket Subdivision on Bloor street, in the said city of Toronto.

3. That plans showing the two subways on Bloor street be filed by the railway companies, for the approval of the Chief Engineer of the Board, within thirty days from the date of this order; and that plans showing the Royce avenue subway be filed, for the approval of the Chief Engineer of the Board, not later than January 1, 1925; detail plans of the said work also to be filed for the approval of the Chief Engineer of the Board.

4. That the work on the two subways at Bloor street be commenced not later than August 1, 1924, and completed not later than July 1, 1925.

5. That the work on the subway at Royce avenue be commenced as early in the spring of 1925 as convenient, and completed not later than January 1, 1926.

6. That all questions of distribution of costs, interest, or other matters involved in the construction of the said work be reserved for further order of the Board.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35223

In the matter of the application of the Dominion Atlantic Railway Company, under Section 323 of the Railway Act, 1919, for approval of By-law No. 16, dated 4th June, 1924, authorizing the General Freight and Passenger Agent from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of freight and passenger traffic upon the railways owned or operated by the company, or any portion thereof.

File No. 28570

WEDNESDAY, the 18th day of June, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders: That the said By-law No. 16, on file with the Board under file No. 28570, be, and it is hereby, approved.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35235

In the matter of the Order of the Board No. 35108, dated May 19, 1924, authorizing the Canadian Pacific Railway Company to open for the carriage of traffic that portion of its main line, as revised, between mileage 14 and 16 Mountain Subdivision, in the Province of British Columbia, provided the operation of trains be limited to a speed not exceeding 15 miles an hour.

File No. 32601

THURSDAY, the 19th day of June, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading what is filed on behalf of the railway company; and upon the report and recommendation of its Engineer, concurred in by its Chief Engineer,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its main line, as revised, between mileage 14 and 17.05 Mountain Subdivision, in the province of British Columbia; and that the said Order No. 35108 be rescinded.

F. B. CARVELL,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Barbeau Brothers, Limited, et al, for an Order directing that trains stop on flag at Adirondack Junction—N.Y.C.R. and C.P.R.

File 19855.23.3 and File 23910.

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner:*

It seems to me that the traffic originating at Adirondack Junction, whether it be great or small, is entitled to reasonable facilities into Montreal, and at a reasonable hour in the morning. The New York Central have been stopping their early morning train No. 21 for some time, due at Adirondack Junction at 5.25 a.m., but as this is very early, it would seem that with all the trains passing through this point some more convenient train could be made available for this particular traffic.

As Adirondack Junction and the line from there to Montreal is on the Canadian Pacific Railway system, it seems to me the burden is on that company to furnish reasonable facilities for whatever traffic may offer.

This matter has been up a number of times during the last three years, and some time ago, the Canadian Pacific Railway Company agreed to stop one of their morning trains on flag on Sunday mornings, and I think this stop should be made daily; and therefore, an order should issue, directing the Canadian Pacific Railway Company to stop either the St. John train No. 15 or the Boston train No. 209 at Adirondack Junction, on flag, until further ordered, the company to be the judge of which train they can stop with the least inconvenience to themselves.

June 6, 1924.

Commissioner Boyce concurred.

Application of the Meigs Pulpwood Company, New York, N.Y., for ruling of the Board as to the legally published rate on pulpwood, in carloads, from Greening, Que., to Cornwall, Ont., between August 31 and December 1, 1923.

File 26901.39

OTTAWA, July 4, 1924.

THIS REPORT IS ISSUING AS THE

JUDGMENT

OF THE BOARD IN THIS MATTER.

The above matter was submitted to the Board by applicants under date of May 19, 1924, by a statement of facts filed by them, which reads as follows:—

“On August 31, 1923, we commenced the shipment of pulpwood from Greening, Que., to Cornwall, Ont., taking delivery of the cars at that point.

“As to the first eight cars arriving at Cornwall (as per schedule A attached) the railroad assessed, and this company paid, freight charges on the bases of 16 cents per cwt., as per page 14 of the C.N.R. Tariff C.F.-148, C.R.C. E-630 (applying specifically to ‘pulpwood’).

“After the arrival of these cars and at a time when a large number of cars were en route to Cornwall, from the same point of origin, the railroad, without previous notice, assessed 28 cents per cwt., instead of 16 cents. This excess charge was applied to nineteen cars.

“Assuming this to be an error, we made claim for refund against the railroad as the freight bills were received by us. Ten of these claims were paid (as per schedule B attached).

“As to the remaining nine cars, the railroad has refused to make refund on the following grounds:—

“That the tariff is applicable only on pulpwood for manufacture and reshipment via the Canadian National Railways, by virtue of the fact that on page 3 of the tariff in question is a list of mileage rates to forty-four different points in Canada, the heading of which list states that the rates cover pulpwood ‘for manufacturing and reshipment via the the Canadian National Railways.’ It is their contention that the specific rates shown in the same tariff, commencing on page 9, to six points, including Cornwall, are simply a reproduction of the mileage rates ‘for the information of their agents’; that therefore a heading covering the mileage list also applies to the specific rates published in the same tariff and that, inasmuch as the wood was not manufactured at and reshipped from Cornwall, via the Canadian National Railways, although delivery was actually made and accepted at Cornwall, the specific rates listed in the tariff were not applicable to this traffic.

“We consider their ruling in this connection unjust for the following reasons:—

“*One.* Tariffs are published in accordance with legal requirements for the purpose of notifying the public of legally established freight rates and are not subject to change by the railroad without due legal process and public notice.

“*Two.* Tariff C.F.-148, C.R.C. E-630, on the face of it, states ‘Special, Local, Competitive, Proportional and Joint Freight Tariff, in connection with Participating Carriers shown on page 2, on Pulpwood, Carloads.’

"The fact that the title specifies 'Participating Carriers' shows that the rates published therein were not intended solely for application to pulpwood 'for manufacture and reshipment via the Canadian National Railways.'

"*Three.* There is no paragraph in the tariff stating that the specific rates shown on pages 9 to 21 are simply reproductions of the Mileage Rates shown on page 3.

"*Four.* The tariff is specifically divided into three parts, namely, 'Mileage Rates,' 'Specific Rates,' and 'Miscellaneous Rates.' The Mileage Rates are applicable to forty-four different points, the Specific Rates to six points, and the Miscellaneous Rates to thirty-five points.

"A specific list of stations to which Mileage Rates apply appears on page 3 of the published tariff. A specific list of stations to which Specific and Miscellaneous Rates apply appears on page 8 of the published tariff.

"*Mileage Rates.* This list contains forty-four points, twenty-three of which do not appear in the list of stations on page 8.

"*Miscellaneous and Specific Rates.* This list contains forty-three points, twenty-three of which do not appear in the list of stations on page 3.

"*Specific Rates.* These rates are applicable to six points, two of which do not appear under the Mileage List of Stations on page 3.

"It is therefore evident that the railroad's contention that 'the Specific Rates are simply a reproduction of the Mileage Rates' is incorrect as the two lists, each containing points not named in the other, cannot possibly be a reproduction, one of the other.

"In this connection, we quote from the railroad company's letter dated March 11, 1924:—

"'It may be quite true, as stated by the Meigs Pulpwood Company, that the provision that the wood must be manufactured and the product reshipped via the line bringing it in *can be interpreted as applying only to the mileage scale*; but, as a matter of fact, the specific rates published in the tariff in question are simply a reproduction of the mileage rates for the information and ready use of our agents, and therefore, it is quite obvious the same restriction must attach to such specific rates.'

"*Five.* On December 1, 1923, after complete delivery of shipments covered by our claims, the Canadian National Railways issued Supplement No. 13 to their tariff C.F.-148, C.R.C. E-630, which changed the cover to read 'Pulpwood, Carloads (for manufacturing and reshipment, except otherwise specified).' On page 2 of the supplement, under the heading 'Specific Rates,' it was noted 'Add reference mark 1 to Cornwall, Cornwall Junction, Georgetown, Merritton, Thorold, Ont., and Windsor Mills, Que.' Reference mark 1, on page 3, read 'Applicable only on pulpwood for manufacturing and reshipment via Canadian National Railways.'

"It is evident that the supplement was issued to cover a point which was *not* covered by the tariff itself.

"This company has, for the past six years, been shipping pulpwood into Cornwall and taking delivery at that point, the rates always having been assessed on the basis of the tariffs preceding and cancelled by C.F.-148.

"In view of the foregoing we respectfully submit that the proper and legally published rate covering pulpwood moving from Greening,

Que., to Cornwall, Ont., prior to December 1, 1923, was 16 cents per cwt., under the provisions of the tariff, and that the Canadian National Railways should be instructed to make payment of the overcharges, statement of which is enclosed (Schedule C), with interest from dates of presentation."

SCHEDULE A

SHIPMENTS AS TO WHICH CORRECT RATE WAS ASSESSED

Car Number and Initial	Date of Shipment
G.T.P. 302551.....	Aug. 31
G.T. 20049.....	Sept. 3
C.N. 63444.....	Sept. 5
G.T. 18729.....	Sept. 15
C.N. 428486.....	Sept. 17
G.T. 12094.....	Sept. 19
G.T. 14798.....	Sept. 21
C.G.R. 553628.....	Sept. 24

SCHEDULE B

PAID CLAIMS Covering Shipments from Greening, Que., to Cornwall, Ont., as to which charges were originally assessed on the basis of 28 cents per cwt. and reduced later to 16 cents

Car Number and In.	Date Shipment	Claim Number	Amount	Date Paid
			\$ cts.	
C.N.R. 49152.....	Sept. 28	M-477	81 72	Nov. 8
G.T. 104489.....	Oct. 9	M-481	89 64	Nov. 23
Q.M. & S. 4730.....	Oct. 10	M-480	85 32	Nov. 21
C.G.R. 553263.....	Oct. 6	M-478	85 68	Nov. 17
C.N. 37422.....	Oct. 27	M-494	86 28	Dec. 6
C.N. 327563.....	Oct. 29	M-494	84 72	Dec. 6
C.N. 68938.....	Oct. 24	M-491	87 00	Nov. 19
C.N. 416688.....	Oct. 24	M-485	83 64	Nov. 13
C.N. 324427.....	Oct. 22	M-484	85 80	Nov. 24
C.N. 71574.....	Oct. 18	M-491	84 00	Dec. 6

SCHEDULE C

Car Number and Initials	Date Shipment	Weight	Rate	Freight	Over-charge	Claim No.	Date of Claim
	1923	lbs.	cts.	\$ cts.	\$ cts.		1923
G.T.P. 302629.....	10/4	54,700	28	181 16*			
Should be.....		54,700	16	87 52	93 64	M-483	11/10
G.T. 19871.....	10/6	73,300	28	205 24			
Should be.....		73,300	16	117 28	87 96	M-479	11/1
G.T. 22342.....	10/9	73,900	28	206 92			1924
Should be.....		73,900	16	118 24	88 68	M-526	3/4
G.T.P. 305061.....	10/13	73,400	28	205 52			1923
Should be.....		73,400	16	117 44	88 08	M-486	10/13
G.T. 25009.....	10/16	73,500	28	205 80			
Should be.....		73,500	16	117 60	88 20	M-487	11/15
C.N. 50758.....	10/22	70,900	28	198 52			
Should be.....		70,900	16	113 44	85 08	M-490	11/17
C.N. 317509.....	10/27	74,100	28	207 48			
Should be.....		74,100	16	118 56	88 92	M-493	11/20
G.T.R. 26422.....	10/27	45,000	28	126 00			
Should be.....		45,000	16	72 00	54 00	M-493	11/20
G.T. 6186.....	10/16	59,300	28	166 04			
Should be.....		59,300	16	94 88	71 16	M-488	11/16
Total.....					816 88		

* There is an error in extension in the amount of \$83.00.

On May 31 copy of the application and statement of facts therein referred to was served upon the Canadian National Railways. The railway company having not yet answered, it was written to on June 25 and advised that unless the Board was in receipt of an answer by July 1 it would proceed *ex parte*. No reply has yet been received from the railway company.

The Board is asked for a ruling as to the legally published rate on pulpwood, in carloads, from Greening, Que., to Cornwall, Ont., between August 31 and December 1, 1923. There was in effect during this period Canadian National Railways' Tariff C.R.C. No. E-630; this tariff, as per title page, applied on "Pulpwood, carloads."

This tariff contains on page 3 thereof mileage rates on pulpwood from Westfort, Armstrong, Sarnia, and Windsor, Ont., and stations east thereof to certain named points for manufacturing and reshipment via Canadian National Railways. This is a mileage scale and shipping points are not named.

On pages 9 to 21 of the tariff specific rates on pulpwood, in carloads, are published, and the specific rate from Greening Que., to Cornwall, Ont., as shown on page 14, is 16 cents per 100 pounds. With respect to these specific commodity rates there is no reference mark or restriction which would provide for the application of said rates only when the pulpwood is for manufacturing and reshipment via Canadian National Railways. As published, these rates would apply on "Pulpwood, carloads," as per title page of tariff, and without any other qualification such as provided for on page 3.

By Supplement No. 13 to this tariff C.R.C. No. E-630, effective as to advances December 1, 1923, the railway company added reference mark (1) to the rates published on pages 9 to 21 of the tariff to Cornwall, Cornwall Junction,

Georgetown, Merritton, and Thorold, Ont., and Windsor Mills, Que.; and in the same supplement it also added reference mark (4) to Three Rivers, Que. The application of these reference marks, as provided for in said supplement, was as follows:—

(1) Applicable only on pulpwood for manufacturing and reshipment via Canadian National Railways.

(4) Applicable only on pulpwood for manufacturing and reshipment.

It will be observed, therefore, that whereas previously the rates applied to the stations named without qualification, effective with Supplement 13 the application of the rates to destinations with reference mark (1) was on pulpwood for manufacturing and reshipment via Canadian National Railways, while to stations with reference mark (4) the application was only on pulpwood for manufacturing and reshipment and not necessarily, as worded, for “reshipment via Canadian National Railways.” The situation is, therefore, that with respect to the specific rates shown on pages 9 to 21 of the original tariff they applied on “pulpwood.” By Supplement 13 the application of these specific rates was altered so that in the one case they applied on “pulpwood, for manufacturing and reshipment,” and in the other case on “pulpwood, for manufacturing and reshipment via Canadian National Railways.” In addition to the change in this supplement providing for two different applications of the rates, it may be further stated that the changes in question were prefixed with the symbol which indicates an advance in rates and the thirty days’ notice required under section 331, subsection 3, of the Railway Act was given.

It appears the railway company have taken the position that these specific rates *were intended* to apply only on pulpwood for manufacture and reshipment via the Canadian National Railways. However, the tariff did not so read. A restricted application of the rates was only made effective in Supplement 13, as already referred to.

The Board has already in a number of cases made rulings regarding the construction to be placed upon provisions contained in railway tariffs to the effect that tariffs are to be construed with strictness and the language and not the intention of the framers is the controlling factor. See Board’s Printed Judgments, Orders and Rulings, Vol. X, p. 64, and Vol. XI, p. 477.

On the record, therefore, the situation is that between the dates June 30 and December 1, 1923, the lawfully published rate on pulpwood, carloads, from Greening, Que., to Cornwall, Ont., was 16 cents per 100 pounds, and that said rate was not restricted to shipments “for manufacturing and reshipment via Canadian National Railways.” A declaratory order to this effect should issue.

W. E. CAMPBELL,
Chief Traffic Officer.

ORDER No. 35266

In the matter of the application of the Nipissing Central Railway Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of proposed passenger station at Kirkland Lake, as shown on the plan No. B-386, dated June 23, 1924, on file with the Board under file No. 11014.11.

MONDAY, the 30th day of June, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of its Chief Operating Officer,—

The Board orders: That the proposed temporary passenger station of the applicant company at Kirkland Lake, in the province of Ontario, as shown on the said plan on file with the Board under file No. 11014.11, be, and it is hereby approved.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35287

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Rosetown Southeasterly Branch from mileage 0 to mileage 43-15.

File No. 29384

FRIDAY, the 4th day of July, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Rosetown Southeasterly Branch from mileage 0 to mileage 43-15.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35289

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Bassano Easterly Branch (Empress to Milden), mileage 0 to 61.89.

File No. 18863.49

FRIDAY, the 4th day of July, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Bassano Easterly Branch (Empress to Milden), mileage 0 to 61.89.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35288

In the matter of the application of the residents of Tuffnell, in the Province of Saskatchewan, for an Order directing the Canadian Pacific Railway Company to appoint a permanent station agent at Tuffnell.

File No. 4205.325

SATURDAY, the 5th day of July, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company,—

The Board orders: That the Canadian Pacific Railway Company be, and it is hereby, required to appoint a station agent at Tuffnell, in the province of Saskatchewan, by the 1st day of August, 1924.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35302

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 179 of the Railway Act, 1919, for authority to close its station at Ardley, Alberta.

File No. 4205.251

WEDNESDAY, the 9th day of July, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading what is filed in support of the application,—

The Board orders: That the applicant company be, and it is hereby, authorized to close, as an agency, its station at Ardley, in the province of Alberta; the question of the appointment of a grain agent at the said point being hereby reserved.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 404

In the matter of the question of hand rails and small foot rests on the outside of cabs of locomotives; and a railing on the tender to prevent men slipping off when they are passing over the tender, or when the locomotive is taking coal or water.

File No. 22223

WEDNESDAY, the 9th day of July, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading what is filed on behalf of the Railway Association of Canada and the railway companies affected; and upon the report and recommendation of its Chief Operating Officer,—

The Board orders as follows:—

1. That the railway companies subject to the jurisdiction of the Board, with the exception of the Boston and Maine, Maine Central, Rutland, and New York Central Railroad Companies and the Great Northern Railway Company (which are engaged in international traffic), be, and they are hereby, directed to equip all locomotives of 100,000 pounds, or over, with hand rails on the sides of the cabs above the windows, near the top of the cab, and running the entire length of the same, and to continue across the front of the cab. Where it is not practicable to extend the railing across the front of the cab, suitable hand-holds shall be provided; the rails to have a clearance of two inches between the inner side of the rail and the outside wall of the cab, and to be supported by columns to make them secure.

2. That where the running boards do not project beyond the side of the cab, an additional piece be added, to project not less than one inch from the side of the cab, and running the full length of same.

(a) That all locomotive tenders of the coal-hopper type, equipped with hoppers 24 inches and over, shall have a hand railing on both sides of the coal hopper, to run the full length of the same and across the back end—the same to have a clearance of not less than two inches between the inner side of the rail and the outside wall of the fuel well, and to be located near the top, but not to project above. Hoppers less than 24 inches high shall be equipped with a railing on both sides and across the back, on the top of the hopper, to measure 8 inches over all from top of hopper, back walls sloping towards the front of hoppers excepted.

(b) That when necessary to renew equipment now in service, and for all future construction, coal hoppers must be designed so as to provide a sidewalk the full length of the hopper, with a minimum width of eight inches.

(c) That all locomotive tenders of the open-top type be equipped with a railing on both sides, on top of the coping, to measure eight inches over all from top of coping, the said rails to run the full length of the fuel storage well, or clear of the back coal wall, on the tender.

(d) That on the spaces back of the coal wall, where the water manhole is located, a railing be provided projecting eight inches above the top of the tank and running around both sides and back of the tank. Where tenders of engines are equipped with a coping eight inches high, on the space back of the coal wall, the coping will be accepted as a railing.

(e) That the said railings (c) and (d), if made of round iron or of iron pipe, be not less than one inch in diameter, supported by columns.

3. That the top of the tender behind the fuel space and the running-boards on the coal-hopper type be kept clean; that suitable covers be provided for the filling holes; and that, where a coping is in use behind the fuel space, means must be provided to carry off waste water.

4. That plans showing the proposed foot rests and the railing on tenders be filed for the approval of the Board.

5. That General Order No. 171, as amended by General Order No. 172, made herein, be, and it is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Department of Public Highways of Ontario for approval of plan showing proposed new steel bridge to be located on the straight line of the road allowance between the Townships of East and West Flamboro, County of Wentworth, Ontario, and for a hearing and adjustment of the cost between the Canadian Pacific Railway Company and the Department of Public Highways of Ontario.

File 1852.19

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner:*

Clappison bridge, so called, is on the trunk highway recently constructed between Hamilton and Guelph, in the province of Ontario, on the road allowance between the townships of East and West Flamboro, county of Wentworth.

For more than 100 years, the highway existed at this point, but in the year 1913, when the Canadian Pacific Railway constructed their line it was agreed between them and the municipal authorities that the highway should be diverted at this point a certain distance to the east where it passes over the railway track at a cut by means of an overhead bridge. By agreement the municipality conveyed that portion of the old highway within the railway right of way to the railway company, and the diversion legally became a part of the highway in place of the original location, and by agreement and an order of this Board, the bridge in question was to be built and maintained solely at the expense of the railway company. They constructed a wooden bridge and have maintained it since 1913, which has answered the purposes of traffic up to the present time.

A year ago, the province of Ontario decided to straighten out the road again and constructed a bridge over the railway tracks on the old location, thereby causing an abandonment of the present wooden bridge, but as the railway company is responsible for the maintenance of this bridge in perpetuity, the question which the Board has to decide is what amount of money they should pay at the present time to the province, as a settlement of all claims which the province might have against them in the future, for construction and maintenance.

It seems to be admitted by all parties, that the present bridge has outlived its usefulness, and must be rebuilt, and at the hearing, Mr. Flintoft claimed that it could be rebuilt for \$3,050. Our Chief Engineer, Mr. Mountain, has personally inspected the locus and he claims that Mr. Flintoft's figures are

practically correct for a bridge of the dimensions referred to by him, but on account of the great increase in traffic the bridge, when rebuilt, would have to be 30 feet wide instead of 20 feet, as at present, capable of carrying a load of 15 tons, which would be a fair standard in that portion of Ontario at the present time, and would cost \$5,000.

He also claims that this bridge would have to be surfaced with a top layer of planking about once in three years, and that the bridge would again have to be rebuilt in twelve years, and so on continuously at periods of twelve to thirteen years. As the bridge must be rebuilt at once therefore, I have no difficulty in finding what amount the railway should contribute for that particular purpose, namely the sum of \$5,000, and as the company must rebuild at the end of twelve or thirteen years in the future and keep on doing so, it seems to me in addition to this sum, they should pay the province such a sum of money as would when compounded at 6 per cent interest for twelve years produce a fund sufficient to erect another bridge and leave the capital amount intact for accumulation in the future. I have taken \$5,000 as the amount, and on going over the matter I find that in twelve years \$5,000 compounded at 6 per cent interest would produce \$5,064, and as the bridge might possibly last another year, it seems to me there would be sufficient income not only to provide a fund for rebuilding, but for maintenance as well, and therefore I think \$5,000 is the correct sum for that phase of the case.

Putting these together, it would amount to \$10,000 which the railway company should pay to the province, and be entirely exonerated from any further liability or contribution, either towards the construction or maintenance of the new bridge or of the wooden bridge now existing on the highway.

July 10, 1924.

Commissioner Lawrence concurred.

ORDER No. 35308

In the matter of the Order of the Board No. 35153, dated June 5, 1924, directing the Canadian Pacific and the Canadian National Railway Companies to construct, inter alia, two subways, one on Bloor Street and one on Royce Avenue, in the City of Toronto, in the Province of Ontario.

File No. 32453

THURSDAY, the 10th day of July, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon reading what is filed in support of the Canadian Pacific and the Canadian National Railway Companies,—

The Board orders: That the said Order No. 35153, dated June 5, 1924, be amended by striking out clause 1 thereof and substituting therefor the following, namely:—

“1. That the Canadian Pacific and the Canadian National Railway Companies be directed to construct two subways under their tracks, one on Bloor street and one on Royce avenue, in the said city of Toronto; the Canadian Pacific Railway Company to do all the work on the said subways under the tracks of its Galt and of its Toronto, Grey and Bruce Subdivisions and under the Brampton Subdivision of the Canadian National Railway Company, south of the North Toronto Diamond, with

the exception of providing and actually placing the girders on the Canadian National Railway Company's tracks, which work is to be performed by the Canadian National Railway Company; the Canadian National Railway Company to do all the work on the subways north of the Diamond."

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35314

In the matter of the application of the London and Port Stanley Railway Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, 1919, for approval of resolution, passed March 24, 1924, authorizing its General Freight and Passenger Agent from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of passenger and freight traffic on the said railway, or any portion thereof.

File No. 26845

MONDAY, the 14th day of July, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said by-law, passed March 24, 1924, authorizing the applicant company's General Freight and Passenger Agent from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of freight and passenger traffic on the said railway, or any portion thereof, on file with the Board under file No. 26845, be, and it is hereby, approved.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35316

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Archive to Wymark Branch, mileage 50.1 to 102.9 (mileage 0 to 52.8—construction mileage—from turnout near Wymark).

File No. 29353.16

MONDAY, the 14th day of July, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Archive to Wymark Branch, mileage 50.1 to 102.9 (mileage 0 to 52.8—construction mileage—from turnout near Wymark).

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35360

In the matter of the application of the Canadian National Railways, herein-after called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of location of proposed station to be erected at Hamton, in the Province of Saskatchewan, as shown on plan dated Hamton, May 26, 1924, on file with the Board under file No. 4205.220.

FRIDAY, the 18th day of July, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

CALVIN LAWRENCE, *Commissioner.*

Upon the report and recommendation of its Chief Operating Officer,—

The Board orders: That the location of the applicant company's proposed station at Hamton, in the province of Saskatchewan, as shown on the plan on file with the Board under file No. 4205.220, be, and it is hereby, approved.

F. B. CARVELL,
Chief Commissioner.

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Application of N. S. McDonald, owner of Tams Coal Lease, Mountain Park Branch, Canadian National Railways, for:

- (a) *Order of the Board granting him running rights over the spur track now in use by Luscar Collieries, Ltd., in order that he may develop his coal leases in that District.*
- (b) *Order of the Board requiring the Canadian National Railways to grant him permission for construction of spur track to serve his coal lease; said spur to commence at a point on the west leg of the "Y" of spur now used by Luscar Collieries in a westerly direction for approximately 1,000 feet.*

File 31531.1

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

When the Board last sat at Edmonton on the 26th of November last, application was made by N. S. McDonald, owner of Tams Coal Lease, for (a) Order of the Board, granting him running rights over the spur track now used by Luscar Collieries, Ltd., and (b) Order of the Board requiring the Canadian National Railways to grant him permission for the construction of a spur track to serve his coal lease, said spur to commence at a point on the west leg of the "Y" of spur now used by the Luscar Collieries in a westerly direction of approximately 1,000 feet.

Since the sittings above referred to, the Board has been supplied with a copy of a contract dated the 21st of April, A.D. 1923, between the Mountain Park Coal Company, Ltd., of the first part, the Luscar Collieries, Limited, of the second part, the Grand Trunk Pacific Branch Lines Company of the third part, and the Grand Trunk Pacific Railway Company of the fourth part, by which the Luscar Company after referring to certain agreements heretofore made between the Branch Lines Company, the Railway Company and the Mountain Park Coal Company, consents to the jurisdiction of this Board for the approval of the location of the Luscar branch and the maintenance and operation thereof of the Branch Line Company. I therefore think that the Luscar Company comes within the terms of Section 6, Clause C, of the Railway Act, and is a work for the general advantage of Canada, and now is a part of the Canadian National Railway system.

Under the law, there are two methods of obtaining a branch line to this system. The first would be an ordinary branch line agreement, under Section 181, etc., of the Act; and the second, under Section 185. Evidently the parties are unable to agree under the provisions of Section 181 for the construction of a branch line, and therefore, if Mr. McDonald will make an application to this Board under Section 185, commonly called the Forced Construction Section, an Order should issue, giving him the right of connection at such a point as may be approved by an engineer of this Board.

May 23, 1924.

Commissioners Lawrence and Oliver concurred.

ORDER No. 35401

In the matter of the application of the Canadian Pacific Railway Company for an extension of time until October 31, 1924, within which the existing station limits rule (Special Instruction "E") may be continued in the working time tables:

File No. 4135.26

FRIDAY, the 1st day of August, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application—

The Board orders that the time within which the necessary changes and instructions to employees of the Canadian Pacific Railway Company, to observe the Uniform Code of Rules for Canadian Railways approved by General Order No. 42, dated July 12, 1909, may become effective, be, and it is hereby, further extended until October 31, 1924.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 35402

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, 1919, for approval of By-law No. 5, dated June 16, 1924, amending By-law No. 3 approved by the Order of the Board No. 33616, dated April 28, 1923.

Case No. 435

SATURDAY, the 2nd Day of August, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Chief Traffic Officer,—

The Board Orders: That By-law No. 3, dated April 16, 1923, approved under the said Order No. 33616, dated April 28, 1923, be, and it is hereby, amended by changing the words, "tariff bureau," to "rate and tariff bureau," in the two places where they occur.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 405

In the Matter of the General Order of the Board No. 404, dated July 9, 1924, directing railway companies subject to the jurisdiction of the Board to equip all locomotives of 100,000 pounds or over with hand-rails on the sides of the cabs above the windows, near the top of the cab, and running the entire length of the same, and to continue across the front of the cab:

File No. 22223

WEDNESDAY, the 6th day of August, A.D. 1924.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed on behalf of the Central Vermont Railway Company; and the report and recommendation of its Chief Operating Officer—

The Board Orders: That the said General Order No. 404, dated July 9, 1924, be amended by adding the words, "the Central Vermont Railway Company," after the word "Companies" in the third line of paragraph 1 of the Order.

F. B. CARVELL,
Chief Commissioner,

Railway Commissioners for Canada

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In the matter of Order No. 31927, dated December 20, 1921, suspending proposed provision in Dominion Atlantic Railway Company's tariff C.R.C. No. 575 providing for terminal charges of $1\frac{1}{2}$ cents per 100 pounds, minimum \$5 per car, on export and import carload shipments handled through Deep Water Terminals at Halifax.

File No. 21700.11

REPORT OF MR. W. E. CAMPBELL, CHIEF TRAFFIC OFFICER OF THE BOARD

For many years import and export freight, in carloads, to and from Halifax and points on the Dominion Atlantic Railway, was not subject to any terminal charge representing switching at Halifax. The traffic was switched from the Dominion Atlantic's North Street terminal to what are called the Deep Water Docks by the Intercolonial Railway (and later by the Canadian National) without any charge for switching being imposed by said railways.

When the so-called New Ocean Terminals were completed, the Canadian National Railways, on account of the distance involved (which is about 6 miles), imposed a switching charge on this traffic of $1\frac{1}{2}$ cents per 100 pounds, minimum \$5 per car, and the Dominion Atlantic Railway amended their tariffs so that this charge was passed on to the shipper or consignee. The Dominion Atlantic justifies its action through the fact that in originally establishing these rates, which are appreciably lower than the local or domestic rates, they did not contemplate the absorption of such terminal charge, as at that time the traffic was all handled through Deep Water Terminals and no switching charge was imposed.

In November, 1920, the Canadian National Railways published a tariff provision providing for the assessment of the same switching rate between Dominion Atlantic Railway and Deep Water Terminals as had already been published to the New Ocean Terminals. The Dominion Atlantic Railway, in turn, amended its tariffs to provide that export and import carload shipments handled via Halifax would be subject to Canadian National Railways' switching charge of $1\frac{1}{2}$ cents per 100 pounds, minimum \$5 per car, through both Deep Water and New Ocean Terminals. There was complaint to the Board from the Nova Scotia Shippers' Association as to the assessment of this switching

charge by the Dominion Atlantic Railway on apple traffic handled through Deep Water Terminals, and the charge in question, so far as traffic handled through Deep Water Terminals was concerned, was suspended by the Board until further notice.

At the hearings reference was made to the working agreement between the Dominion Atlantic and Canadian National Railways with respect to traffic handled over the joint section from Windsor Junction to Halifax, and some question was raised as to the propriety of any switching charge being imposed by the Canadian National Railways. However, the Canadian National Railways have, since 1920, been making this switching charge, and as a result of the Board's order in question the Dominion Atlantic Railway has been compelled to absorb it. It would appear from the record that, so far as any contractual agreement as between the companies is concerned, the Canadian National Railways have the right to assess a switching charge for switching service performed by them, and the question for determination appears to be as to the reasonableness of the charge and who should absorb it, having regard to the various conditions surrounding the movement of this traffic.

The position of the Dominion Atlantic Railway, briefly stated, is that the rates originally established did not contemplate the absorption of a charge of this nature subsequently imposed against them, and that in view of their financial condition and the low basis of these rates, that company should not be compelled to absorb the charge.

It will be observed that the charge in question, viz., $1\frac{1}{2}$ cents per 100 pounds, minimum \$5 per car, is made by the Canadian National Railways to both Deep Water and New Ocean Terminals. It is stated that the switching haul involved in the case of Deep Water Terminals is approximately 200 yards, and in the case of the New Ocean Terminals some 6 miles. An inequality in the service performed for the same charge is therefore apparent. I do not consider this import and export traffic could be properly brought under the terms of the Board's General Order No. 252 in relation to interswitching charges, but it is my opinion that the charge allowed terminal carriers for interswitching under the order in question for distances up to 4 miles should be a reasonable maximum charge for the switching service performed in this case by the Canadian National Railways to Deep Water Terminals. The Canadian National Railways, under the terms of the Interswitching Order, are required, on ordinary traffic, to perform terminal service for distances not exceeding 4 miles at a rate of 1 cent per 100 pounds, and I consider a rate in excess of that for a haul of approximately 200 yards, viz., to the Deep Water Terminals, is unreasonable. I consider it would be reasonable to subject this export and import traffic between the Dominion Atlantic Railway connection and Deep Water Terminals to the same arrangement as provided by the Interswitching Order in the case of private sidings, viz., that the charge of the Canadian National Railways should be reduced from $1\frac{1}{2}$ cents to 1 cent per 100 pounds, minimum \$5 per car, and that the Dominion Atlantic Railway should absorb one-half of said toll and the balance charged against the traffic.

OTTAWA, June 27, 1924.

The Board agreed in the disposition recommended by Mr. Campbell.

ORDER No. 35457

In the matter of the Order of the Board No. 31927, dated December 20, 1921, suspending proposed provision in the Dominion Atlantic Railway Company's Tariff, C.R.C. No. 575, providing for a terminal charge of 1½ cents per 100 pounds, minimum \$5.00 per car, on export and import carload shipments handled through Deep Water Terminals at Halifax.

File No. 21700.11

THURSDAY, the 7th day of August, A.D. 1924.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been filed on behalf of the railway companies, and the report and recommendation of its Chief Traffic Officer,—

The Board orders as follows:—

1. That the charge of the Canadian National Railway Company for switching carload traffic (ex water or for furtherance by water) to or from the Dominion Atlantic Railway between Halifax Yards and Deep Water Terminals, shall be one cent per one hundred pounds, subject to the minimum weight of the line carrier's tariff, but in no case less than—

\$3.00 per car on 7th, 8th, and 10th class traffic (as per Canadian Freight Classification).

\$5.00 per car on all other traffic.

2. That the Dominion Atlantic Railway Company absorb not less than one-half of the charge, as prescribed by section 1 hereof.

3. That the tariff schedules to give effect to this order be published and filed to come into force on September 8, 1924.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 35467

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Leader Southeasterly Branch from mileage 25.31 to mileage 50.24.

File No. 29389.10

THURSDAY, the 14th day of August, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Leader Southeasterly Branch from mileage 25.31 to mileage 50.24.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35460

In the matter of the application of the Quebec Railway, Light, Heat and Power Company, Limited, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway between Mastai and Beauport, from a point on the Beauport Road, at the Quebec City Limits, to Beauport Station, a distance of 5,500 feet.

File No. 15243.6

FRIDAY, the 15th day of August, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway between Mastai and Beauport, in the province of Quebec, from a point on the Beauport road, at the Quebec city limits, to Beauport Station, a distance of 5,500 feet.

S. J. McLEAN,

Assistant Chief Commissioner.

GENERAL ORDER No. 406

In the matter of the General Order of the Board No. 404, dated July 9, 1924, directing railway companies subject to the jurisdiction of the Board to equip all locomotives of 100,000 pounds or over with hand-rails on the sides of the cabs above the windows, near the top of the cab, and running the entire length of the same, and to continue across the front of the cab.

File No. 22223

TUESDAY, the 19th day of August, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*C. LAWRENCE, *Commissioner.*

Upon reading what is filed on behalf of the Northern Pacific Railway Company, and the report and recommendation of its Chief Operating Officer,—

The Board orders: That the said General Order No. 404, dated July 9, 1924, be amended by adding the words, "the Northern Pacific Railway Company," before the words "and the Great Northern Railway Company," in the fourth line of paragraph 1 of the order.

S. J. McLEAN,

Assistant Chief Commissioner.

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The Board of

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(CORRECTED PRINT, PP. 123, 124 AND 125)

Application of the Canadian National Parks Branch of the Department of the Interior, for approval of plan and profile showing the crossing over the Canadian Pacific Railway at Canmore, Alberta.

File 26216

JUDGMENT

COMMISSIONER BOYCE:

No order is necessary to authorize this crossing as it is covered by Order No. 24118, dated August 24, 1915. A question is, however, raised by the railway company as to the cost of construction and maintenance of the crossing, and a ruling is asked.

The railway is, undoubtedly, senior to the highway and was senior at the time Order No. 24118 was made. The seniority of the railway is undisputed. It was constructed before there were any surveys or roads in the neighbourhood. The original road, or trail (as it was when first constructed), did not follow the lines of any surveyed road allowance but ran diagonally through the station grounds northwest and southeast as shown on plan dated May 19, 1915, filed by the railway company, crossing the tracks of the railway west of Canmore station. This original crossing does not appear to have been authorized by the Board, or by its predecessor, the Railway Committee of the Privy Council. The railway company, by agreement, dated May 7, 1915, which is filed, entered into an arrangement with His Majesty the King, represented therein by the Honourable the Minister of the Interior, to close the original crossing and to substitute for it the present crossing, effecting thereby a road diversion and substituting a road crossing to the east of the station for the old crossing to the west thereof. Order No. 24118 authorized this crossing on the basis and according to the spirit of the agreement referred to, but neither the agreement nor the order made any reference to the cost of construction of the crossing, either old or new. The diversion and crossing were constructed by the railway company, and the crossing has subsequently been maintained by it. The Board is now asked to rule as to such cost.

As the road diversion was put in voluntarily in pursuance of the agreement, I do not think that any order should be made as to the cost of its construction at this late date. I question the jurisdiction of the Board to make such an order. But as to the crossing, before and after Order No. 24118, it is within the province of the Board to dispose of the question now raised, viz., that of the cost of construction and maintenance.

There being no dispute as to the fact of seniority of the railway as to the first—or unauthorized crossing—or as to that substituted for it by said order, I find nothing in the agreement referred to which in law, or by treaty, displaced or interfered with the seniority of the railway. It always was, and now is, senior to the highway, and its claim to seniority cannot be ignored—even after this lapse of time. Had the railway company been alive to its rights the agreement of 1915 referred to might have provided that the whole cost of construction and maintenance, diversion and crossing should have been borne by the Department of the Interior, which was, and is, junior, and its neglect to so provide results in its losing the cost of the diversion which it might, by agreement, have provided for. Its voluntary assumption of the cost of building the diverted road should not, I think, be held as any waiver of its rights of seniority at the crossing, past or substituted, and I, therefore, would order that the cost of construction and maintenance of the substituted crossing, provided for by Order No. 24118, be borne by the Department of the Interior, and that the said order be amended accordingly.

OTTAWA, August 16, 1924.

Assistant Chief Commissioner McLean concurred.

COMMISSIONER OLIVER:

I find that by Order of the Board No. 24118, dated August 24, 1918, the Canadian Pacific Railway Company was authorized to construct this crossing in conformity with an agreement between the railway company and the Department of the Interior, dated May 7, 1915. The agreement related to certain exchanges of land for highway purposes. It was the result of an application by the Canadian Pacific Railway Company to the Board for authority,—

- (1) To construct a road through the Canmore station grounds;
- (2) To cross the main line of the railway, with the said road, east of Canmore station; and
- (3) To close that part of the statutory road allowance which crossed the railway tracks and station grounds, a short distance west of Canmore station.

The concluding paragraph of the order of the Board, of date August 24, 1915, is as follows:—

“That the said crossing be constructed in accordance with the standard regulations of the Board regarding highway crossings, as amended May 4, 1910.”

I respectfully submit that such an order authorizing any certain party to construct a highway crossing over a railway is in fact an order requiring the maintenance of the crossing by the same party.

It is of course quite in order, under changed conditions, for the burden of maintenance to be shifted by an amending order of the Board. I assume that in accordance with custom the Board would expect to be informed of such changed conditions through an application for an amending order by one of the parties. I do not find any such application on file in this case, and I am therefore unable to agree with the conclusions of Mr. Commissioner Boyce, concurred in by the Assistant Chief Commissioner, that an amending order should now be made, relieving the railway company from the burden of cost which was occasioned by their own request, incurred to serve their own purposes and convenience, and from which burden they have not asked to be relieved.

I respectfully submit that it is entirely unusual for the Board to amend its order under such circumstances, and without a public hearing at which the various interests affected might be represented.

I desire to further submit that the question of seniority, as between the railway and the special highway crossing east of Canmore station, does not and cannot arise in this instance, as the crossing is the result of a special agreement between the railway company and the Department of the Interior. In such case, the terms of the agreement and of the order following upon it must govern.

The specific terms of the agreement, to which the railway company is a party, discredit the suggestion that the railway has any right of seniority in respect to the portion of the highway that was closed by order of the Board. The first and second paragraphs of the recital of the agreement read as follows:—

"Whereas, the lands hereinafter described as public lands in the Rocky Mountains Park, set aside as a public road, and through which the Canadian Pacific Railway main line and station yards at Canmore, Alberta, cross;

"And whereas, the company has applied to have this road closed, and the road through their property, as surveyed by George McPhillips, Alberta land surveyor, and shown on the plan herewith, used instead, which road has been built by the company in lieu of the road closed."

It will be observed that there is no admission of any priority or seniority of right on the part of the railway company, in respect of this portion of the statutory road allowance. The declaration is one of absolute ownership by the Crown, without limitation of any kind, although the railway was then in actual occupation of the road allowance, and therefore, provided such right existed, was in a position to establish and exercise the rights of seniority that it is stated they now assert. That declaration of absolute ownership by the Crown was executed under seal by the railway company, as well as by the Department of Interior.

* It is also to be observed that in the part of the same order authorizing the special road diversion the following sentence occurs:—

"(3) To close all that portion of the road allowance along the eastern boundary . . . of section 32, township 21, range 10, west of the 5th meridian, which lies within the said station grounds, except that portion of the said road allowance which lies within the boundaries of the said proposed road."

That is to say—The order of the Board which gives effect to the agreement specifically declares that the Crown retains its absolute ownership of the part of the statutory road allowance which is crossed by, and so becomes a part of, the special road therein authorized. The possibility of the establishment of even the most shadowy claim by the railway to seniority of right in respect of the statutory road allowance is carefully and fully guarded against in the terms of the agreement and order which permitted it to be closed.

In view of the terms of the agreement above mentioned, and also of the well understood provisions of the Dominion Lands Act, in reserving from private right in any and every form, the road allowances set apart by that Act exclusively for the public use as highways, whether before or after survey, I am unable to agree that the order of the Board No. 24118, dated August 24, 1915, should now be amended to place upon the Parks Branch of the Department of the Interior any part of the cost of constructing or maintaining the said highway crossing.

OTTAWA, August 23, 1924.

*This paragraph omitted in first print.

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, October 1, 1924

No. 14

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REPORT OF CHIEF TRAFFIC OFFICER

In the matter of the application of the F. F. Dalley Company of Canada, Limited, Hamilton, Ont., for the suspension of tariff schedules showing Cancellation of commodity rates on Polish or Blacking, Shoe or Stove, in liquid form, in glass or earthenware, packed in barrels or boxes; and in paste form, in tins in boxes; straight or mixed carloads, minimum weight 35,000 lbs.; and Order of the Board No. 34796, dated 29th February, 1924, suspending said schedules.

File No. 33220

THIS REPORT IS ISSUED AS THE JUDGMENT

OF THE BOARD IN THIS MATTER

For a great many years prior to 1921, shoe and stove polish or blacking, when shipped in the containers above described, in straight or mixed carload quantities, moved under carload rating of fourth class, with a minimum carload weight of 24,000 pounds, as provided in the Canadian Freight Classification. Effective January 1, 1921, on representations from the applicants, the carriers established commodity rates from Hamilton to various points which were the equivalent of the fifth class rates, with a minimum carload weight of 35,000 pounds. Mr. Ransom testified on behalf of the carriers that these commodity rates were established on representations from the applicants that,—

- (a) the carriers would receive an increased revenue per car over what they had been receiving on past shipments;
- (b) a reduction in rates would increase the movement in carload quantities;
- (c) that carload shipments would be made to the following points:—

Brantford, Ont.
Guelph, Ont.
Halifax, N.S.
Kingston, Ont.
London, Ont.
Moncton, N.B.
Montreal, Que.
Ottawa, Ont.

Peterborough, Ont.
Quebec, Que.
St. John, N.B.
Sudbury, Ont.
Toronto, Ont.
Windsor, Ont.
Woodstock, Ont.
Brandon, Man.

Calgary, Alberta.
Edmonton, Alberta.
Fort William, Ont.
Lethbridge, Alberta.
Port Arthur, Ont.
Regina, Sask.
Saskatoon, Sask.
Winnipeg, Man.

The carriers issued schedules effective March 1, 1924, providing for the cancellation of these commodity rates which, by Order No. 34796, the Board suspended pending a hearing.

Mr. Ransom gave the following reasons for the cancellation of the commodity rates:—

- (1) It developed from an investigation made that shipments moving prior to establishment of the commodity rates, instead of having been loaded to 24,000 pounds per car, had been loaded to a weight in excess of 35,000 pounds, consequently the carriers were losing revenue based on the difference between the class rate and the commodity rate, so that instead of receiving increased revenue the carriers lost revenue.
- (2) After the commodity rates had been in effect for some time, complaint was made by the manufacturers of Furniture Polish, Metal Polish and Floor Wax, who asked that they be given the same rates on a mixture of these three articles to the destinations shown in the tariffs naming commodity rates on Shoe and Stove Polish. These manufacturers admitted there was no competition between Furniture Polish, Metal Polish and Floor Wax, and Shoe and Stove Polish, but they contended that inasmuch as their commodities moved in a much larger volume than Shoe or Stove Polish, the carriers could not consistently refuse to grant them ratings equal to those carried on Shoe and Stove Polish, in view of the fact that all of these commodities were classified the same in the Canadian Freight Classification.
- (3) Investigation also developed that the establishment of the commodity rates had not increased the carload movement.
- (4) That instead of movements in carloads to the 24 points covered by applicants' original representation, during 1923 the movement under the commodity rates here in question had been limited to four points, viz.: Calgary, 2 carloads; Winnipeg, 5 carloads; Montreal, 5 carloads; St. John, 3 carloads.

Applicants were notified on July 6, 1923, that the carriers proposed cancelling the commodity rates effective September 1, 1923, but upon their representation the effective date of the cancellation was extended to January 1, 1924, and then subsequently to March 1, 1924.

The applicants are the only manufacturers of shoe and stove polish in Canada who make shipments in carload quantities. They do not ship in carload quantities to any one jobber or customer. They ship from their plant at Hamilton to warehouses at Winnipeg, Calgary, Vancouver, Montreal and St. John, and then distribute their product from these trade centres in less than carload quantities. The shipments to Vancouver move under transcontinental commodity rates on a different basis from the commodity rates here under discussion, and the rates to Vancouver are not here at issue. Mr. Sinnott, representing the applicants, stated at p. 3494:—

“The jobbers in the west do not buy shoe polish in any quantity from shippers in the east, because of the fact that we ship in carloads to warehouses at Winnipeg and Calgary.”

Applicants also ship a very large volume in less than carloads to many points throughout Eastern Canada; Mr. Sinnott stated the less than carload traffic would exceed their carload shipments.

The applicants advanced various contentions in support of a continuance of the commodity rates. Mr. Sinnott stated their cancellation would result in an increase of from 20 to 25 per cent in freight charges, making more burdensome the cost of distribution of their commodities, which they describe as

cheap staple articles of common use. He stated in reply to a question of the Chief Commissioner that the wholesale value of a carload shipment would run from \$10,000 to \$15,000. The difference in freight charges based upon last year's business would be, Mr. Sinnott stated, \$1,400 or \$1,500. It is not alleged that when the freight rates were reduced there was any price reduction or that there will be any advance in price if the rates are increased; it is not apparent that the consumer has been or will be in any way affected. On a carload shipment weighing 35,000 pounds, and taking an average wholesale value of \$12,500, the cancellation of the commodity rates and reversion to the class rate will not equal 1 per cent of the value of the commodity. To the four points to which applicants desire the commodity rates continued the increase in the freight rate would be as follows:—

To	Commodity Rate	Fourth Class	Per cent. of increase
Winnipeg.....	\$1 14	\$1 38½	21·49
Calgary.....	2 00	2 34½	17·25
Montreal.....	43	54	25·58
St. John.....	65	74	13·84

It was contended on behalf of the applicants that when a rate has been continued in effect for a long period of time without complaint that itself is evidence of reasonableness; further, that the conditions which prompted the carriers to establish the commodity rates are the same to-day as they were three years ago. This is answered by the undisputed testimony of Mr. Ransom that it was not long after the establishment of the commodity rates that the carriers concluded they had made a mistake; that the rates had been established under a misapprehension and the carriers decided practically a year ago to cancel them. The Classification basis applied ever since the earliest record of this Board up to January 1, 1921, and when the rates had been in effect only some two years the carriers for the reasons given by Mr. Ransom decided they should be cancelled.

The applicants outlined in considerable detail the principles underlying the making of freight classification ratings, and contended that having regard to such principles their commodities compared favourably with many other articles which in the Canadian Freight Classification are rated fifth class in carloads. Numerous articles were named, many of which it was stated are of greater value than shoe or stove polish. It may be stated, however, that none of the articles named in any way come into competition with those manufactured by the applicants. The list included such articles as: —

Fruit, canned or preserved;	Molasses;
Coffee, essence or extract;	Olives;
Fish, canned;	Pickles;
Jams and Jellies;	Sauces, table;
Mince Meat;	Vegetables, canned or preserved;
Milk, condensed or evaporated;	Vinegar.

In this connection it must be borne in mind that refinement of the Classification is impossible when all the general merchandise classes are confined to about two or three carload ratings, and therefore goods have to be broadly grouped. There is only one rating for teas, no matter how the values may vary; the same with woollen blankets that may range from \$5 to \$25 per pair;

and shoes, hats and many other articles with a wide price range. However, the applicants' whole argument under this heading is more appropriately a classification matter than relevant to the question of commodity rates. The question of the classification is not before the Board on this issue. Proposed Canadian Freight Classification No. 17 has been submitted to and is now before the Board for consideration, and any representations as to the ratings therein should be dealt with in that connection; in fact, submissions have already been received thereon from the applicants.

Applicants also referred to the question of competition. They stated their competitors in Canada numbered some 28 manufacturers, many of them small and taking care of only their local markets and not making any shipments to outside points. Others make less than carload shipments. The applicants are the only manufacturers in Canada shipping in carload quantities, all others shipping in less than carloads at the higher less than carload rates, consequently to this extent applicants have already an advantage over any other competitor in Eastern Canada. It would appear from the statement of Mr. Sinnott at p. 3494 above quoted that this situation is of material benefit to the applicants with respect to business in Western Canada. With regard to foreign competition, some statistics were furnished as to the value of importations from the United Kingdom, but this covered the item: "Blacking, shoe, and shoe-maker's ink, shoe, harness and leather dressing, N.O.P.," and there was no segregation showing what amount of this was represented by shoe polish, nor was any evidence submitted indicating a carload movement. With respect to importation from the United States there was evidence of only one carload that moved from Chicago to Winnipeg. From St. Paul to Winnipeg this movement would be subject to the Canadian Freight Classification and would therefore pay the fourth-class carload rate. There was no evidence showing carload movements from United States points to destinations in Eastern Canada.

Applicants stated that shoe and stove polish in carloads could be shipped at fifth-class rates from Buffalo to Detroit, Chicago, etc., passing through Hamilton; also from United States to Eastern Canadian points; while like traffic from Hamilton to Canadian points would have to pay fourth-class rates and alleged that this situation was discriminatory and in violation of section 316, subsection 3 (a) and (c) of the Railway Act. The rates between United States points and from United States to Canada are inter-state or international rates controlled and established by United States carriers and are also governed by the Official Classification and United States scale of rates, and so far as the movement within the United States is concerned are in no way subject to the jurisdiction of this Board. This is a situation that is generally understood and applies also with respect to other traffic. Further, there is no evidence of shipments from United States to Eastern Canadian points, consequently applicants have not made any showing that they are subjected to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, and violation of the provisions of the Act referred to is not established.

On the record before the Board, the situation with regard to these particular commodity rates is somewhat unusual. Commodity rates are usually established where the classification ratings are too high to enable the traffic to move freely; where the traffic moves in very large volume in carload quantities; to meet market, water or railroad competition; to develop business and increase the revenue of the carriers. The weight of the evidence supports the statement of the carriers that these commodity rates were not established on the ground that they were necessary to foster an industry, to meet competition, or to enable the traffic to move freely. The applicants in their representations

to the carriers prior to establishment of the commodity rates alleged that a reduction in rates would result in increased business and the movement of shipments in carloads to some twenty-four destinations. Instead of shipments moving to twenty-four destinations, the carloads in 1923 were confined to four destinations. Mr. Sinnott admitted at p. 3498 that their expectations of increased carload business had not been realized. The carriers' statement is that they established these commodity rates on the understanding that it would result in increasing their revenue per car, instead of which their investigation developed that prior to the establishment of the commodity rates the shipments had been loaded up to 35,000 pounds, so that the real result was an actual loss in revenue to the full extent of the reduction made in the rate. The carriers' statement as to the loading of the cars prior to the establishment of the commodity rates is not denied by applicants.

On the record, I do not consider applicants have made out a case justifying the Board in ordering a continuance of the commodity rates.

W. E. CAMPBELL,
Chief Traffic Officer.

OTTAWA, September 15, 1924.

REPORT OF CHIEF TRAFFIC OFFICER

*In the matter of Canadian Car Demurrage Bureau v. City of Granby, Que.,
re demurrage charged on tank cars containing oil and tarvia.*

File No. 1700.330.

THIS REPORT IS ACCEPTED AS THE

RULING

OF THE BOARD IN THIS MATTER

Mr. Collins' letter of July 22, 1924, gives the record of the cars involved and outlines the facts of the case. A copy of Mr. Collins' communication was forwarded to the Mayor of the city of Granby and their solicitor's communication of July 31 is on file. The city takes no exception to the record and statement of facts as contained in Mr. Collins' letter, but contends it should not be liable for the demurrage charges on the following grounds:—

1. The cars were not the property of the railway company, belonging to the shippers, who made no complaint concerning the delay; that the siding upon which the cars were placed is built upon the property of a private individual.

2. The contents of these cars required to be unloaded, hauled, and placed on the streets when they were dry, and delay in unloading cars was caused through the weather conditions rendering it impossible to spread the oil on the streets more expeditiously than was done.

There is not here before the Board the question of the reasonableness of the demurrage rules or consideration of any change therein, but simply the question as to what the rules provide with respect to the points raised by the city.

The first point raised by the city is covered by demurrage rule No. 1. This rule defines the cars subject to the rules, viz., "Cars held for or by consignor or consignee for loading, unloading, forwarding directions, or for any other purpose." There is an exception exempting "Private cars (loaded or

empty) on private tracks of the car owner." In this case the cars were not owned by the consignee or the party on whose tracks they were delayed, and therefore were not exempt under this rule from the assessment of the demurrage charges. Reference might be made to the judgment of the Board re demurrage charges on privately-owned cars on private sidings found in Vol. VI, p. 8, of the Board's printed Judgments and Orders.

The second point is covered by rule 5, reading, in part, as follows:—

"(a) If wet or inclement weather, according to local conditions, renders loading or unloading impracticable during business hours, or exposes the goods to damage, the free time allowance shall be extended so as to give the full free time of suitable weather. If, however, the cars are not loaded or unloaded within the first forty-eight hours of suitable weather no additional free time shall be allowed."

These cars were placed available for unloading at 7 a.m. June 17, and the record shows that day was allowed on account of inclement weather. June 18 was a Sunday, and June 19 and 20 were allowed as forty-eight hours of suitable weather for unloading. It is not contended by the city that, during the forty-eight hours free time allowed for this purpose, unloading was impracticable or exposed the goods to damage, and that is all that the demurrage rule covers. The delay to the cars was, it appears, brought about through the fact that the consignee had arranged to unload direct from the cars and haul and spread the contents on the streets, and while unloading was possible during the free time allowed the streets were not sufficiently dry to permit the spreading of the oil and tarvia thereon, and this condition lasted for some time. The Mayor of the city of Granby, in a letter dated July 5, 1922, to the agent of the railway company states, with reference to this material: "This had to be put on road that should be dry." The demurrage rule does not apply to a situation where the weather is suitable to permit the unloading and where there is delay awaiting the condition of roadway to become suitably dry for the proper laying of oil, and therefore the rule does not provide for exemption for delay brought about under the conditions herein described.

W. E. CAMPBELL,
Chief Traffic Officer.

GENERAL ORDER No. 407

In the matter of filing passenger tariffs by foreign railway companies.

File No. 606

FRIDAY, the 5th day of September, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
HON. FRANK OLIVER, *Commissioner.*

Upon its appearing that the filing of certain passenger tariffs by foreign railway companies is neither necessary nor desirable, and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board and in pursuance of the powers conferred upon it by section 341 of the Railway Act, 1919, and of all other powers possessed by it in that behalf, the Board orders as follows:—

(1) Foreign railway companies not owning, controlling or operating lines of railway in Canada shall not be required to file passenger tariffs with the Board.

(2) Foreign railway companies owning, controlling or operating lines of railway in Canada shall not be required to file passenger tariffs with the Board specifying the fares to be charged between points in the United States through Canada.

(3) Concurrences from intermediate Canadian carriers in passenger tariffs specifying the fares to be charged from points in Canada to points in the United States, to be filed with the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35544

In the matter of the application of the Nipissing Central Railway Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of the location and details of its proposed station at mileage 22.4, in the Township of McVittie, Province of Ontario, Swastika-Wendigo Branch, as shown on the plan No. C-180, dated August 28th, 1924, on file with the Board under file No. 11014.18.

FRIDAY, the 12th day of September, A.D. 1924.

S. J. McLEAN, Assistant Chief Commissioner.

A. C. BOYCE, K.C., Commissioner.

C. LAWRENCE, Commissioner.

Upon the report and recommendation of its Chief Operating Officer,—

The Board orders: That the location of the applicant company's proposed station at mileage 22.4 Swastika-Wendigo Lake Branch, at Larder Lake, in the province of Ontario, as shown on the said plan on file with the Board under file No. 11014.18, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35554

In the matter of the application of residents of Looma and Beaumont, in the Province of Alberta, that the Canadian National Railway Company, be required to comply with the Order of the Board No. 27493, dated July 29, 1918, requiring the removal of its station building, siding, and loading platform from its present location, about one mile north-west of Looma, to a point at or near the Northeast Quarter of Section 34, Township 50, Range 23, West 4th Meridian.

File No. 28572

FRIDAY, the 12th day of September, A.D. 1924.

S. J. McLEAN, Assistant Chief Commissioner.

A. C. BOYCE, K.C., Commissioner.

HON. FRANK OLIVER, Commissioner.

Upon hearing the application at the sittings of the Board held in Edmonton, June 13, 1924, in the presence of counsel for the railway company and representatives of the parties interested, and what was alleged,—

The Board orders:

1. That the said Order No. 27493, dated July 29, 1918, be rescinded.
2. That the Canadian National Railway Company move the said station

building to the north side of the track, and the loading platform from the east to the west end of the yard, at a point about 700 feet east of the west switch; and construct a 200-foot platform at a point west of the west switch, on the north side of the track at the point in question.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35558

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic the Long Lake Cut-off between Long Lake and Nakina, in the Province of Ontario.

File No. 9188.166

MONDAY, the 15th day of September, A.D. 1924.

S. J. McLEAN, Assistant Chief Commissioner.
A. C. BOYCE, K.C., Commissioner.

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the Long Lake Cut-off between Long Lake and Nakina, in the province of Ontario, a distance of 30.66 miles.

2. That Order No. 34595, dated December 24, 1923, made herein, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35571

In the matter of the application of the Nipissing Central Railway Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff C.R.C. No. 26, on file with the Board under File No. 29168:

TUESDAY, the 16th day of September, A.D. 1924.

S. J. McLEAN, Assistant Chief Commissioner.
A. C. BOYCE, K.C., Commissioner.
HON. FRANK OLIVER, Commissioner.

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders: That the applicant company's Standard Passenger Tariff C.R.C. No. 26, on file with the Board under file No. 29168 be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35566

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Lanigan Northeasterly Branch from Naicam, at mileage 49.34, to mileage 82.78, at West Junction with the Canadian National Railway at Melfort:

File No. 29383-17

THURSDAY, the 18th day of September, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board Orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Lanigan Northeasterly Branch from Naicam, at mileage 49.34, to mileage 82.78, at West Junction with the Canadian National Railway at Melfort, in the province of Saskatchewan.

S. J. McLEAN,
Assistant Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, October 15, 1924

No. 15

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ORDER No. 35581

In the matter of the application of the F. F. Dalley Company of Canada, Limited, Hamilton, Ontario, for the suspension of tariff schedules showing the cancellation of commodity rates on polish or blacking, shoe or stove, in liquid form, in glass or earthenware, packed in barrels or boxes; and in paste form, in tins in boxes; straight or mixed carloads, minimum weight 35,000 pounds;

And in the matter of the Order of the Board No. 34796, dated 29th February, 1924, suspending the said schedules.

File No. 33220

SATURDAY, the 20th day of September, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

HON. FRANK OLIVER, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, April 1, 1924, the Canadian Freight Association and the F. F. Dalley Company of Canada, Limited, being represented at the hearing, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Order No. 34796, dated February 29, 1924, suspending tariff schedules showing cancellation of commodity rates on polish or blacking (shoe or stove), in carloads, be rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35586

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Tuffnell-Prince Albert Branch from mileage 0 to mileage 95.38.

File No. 31043.29

SATURDAY, the 20th day of September, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Tuffnell-Prince Albert Branch from mileage 0 to mileage 93.38.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 35598

In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement "A" to the Express Classification for Canada No. 6, on file with the Board under

File No. 4397.76

MONDAY, the 29th day of September, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Whereas notice has been given by the Express Traffic Association of Canada in the *Canada Gazette* and to the mercantile organizations enumerated in the General Orders of the Board Nos. 271, 348, and 353; and upon the report and recommendation of its Chief Traffic Officer, and reading the submissions filed on behalf of the Montreal Board of Trade, the Toronto Board of Trade, and the Canadian Manufacturers' Association,—

The Board Orders: That the said proposed Supplement "A" to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.76, be, and it is hereby, approved; the said supplement to be published as "Supplement No. 1 to the Express Classification for Canada No. 6."

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35599

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic its main line from Kakabeka Falls, at old mileage 23.48, operated mileage 22.33, to near Mokomon, at old mileage 35.35, operated mileage 34.20; also revised single track main line between operated mileage 46.81 and 48.38.

File No. 31989.5

MONDAY, the 29th day of September, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its main line (double track) from Kakabeka Falls, mileage 22.33, to mileage 34.20, a distance of 11.87 miles; also its revised single track (main line), Kashabowie Subdivision, between mileage 46.81 and 48.38, a distance of 1.57 miles.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 35608

In the matter of the application of the Mount Royal Milling and Manufacturing Company, Limited, of Montreal, in the Province of Quebec, hereinafter called the "Applicant," for an Order directing the railway companies subject to the jurisdiction of the Board to issue tariffs putting into effect rates on cleaned rice, from Montreal to points in Western Canada, the same as apply out of Vancouver, in the Province of British Columbia, to Middle and Eastern Canadian markets.

File No. 27027.2

WEDNESDAY, the 1st day of October, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

HON. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, June 23, 1924, in the presence of representatives of and counsel for the applicant, Martin & Robertson, Limited, the Imperial Grain and Milling Company, Limited, the Canadian Pacific and the Canadian National Railway Companies, and the Associated Boards of Trade of British Columbia, and what was alleged; and upon reading the further written submissions filed,—

The Board orders: That the rates on rice shown in the Canadian Pacific Railway Company's Supplement No. 61 to tariff C.R.C. No. W-2659, item 285-B; the Canadian National Railway Company's Supplement No. 42 to

tariff C.R.C. No. W-250, item 265-B; the Great Northern Railway Company's Supplement No. 18 to tariff C.R.C. No. 1772, item 155-B, effective October 23, 1924; and in F. W. Thompson's (Chairman, Canadian Freight Association, Western Lines) Supplement No. 17 to tariff C.R.C. No. 44, item 60-A—all on file with the Board under file No. 27027.2, be, and they are hereby, suspended pending hearing by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35623

In the matter of the application of the Corporation of Point Grey, in the Province of British Columbia, and residents of that portion of the said Municipality lying within the boundaries of the new exchange of the British Columbia Telephone Company, known as the "Point Grey Exchange," hereinafter called the "Applicants," for an Order cancelling and rescinding, or delaying the coming into effect of, the tariff of the British Columbia Telephone Company establishing a toll of four cents per call between telephones on the Point Grey Exchange and the telephone connected with the exchanges of the Telephone Company at Vancouver.

File No. 32560.2

WEDNESDAY, the 1st day of October, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

HON. FRANK OLIVER, *Commissioner.*

Upon hearing the applications at the sittings of the Board held in Vancouver, June 23, 1924, in the presence of representatives of and counsel for the applicants and the British Columbia Telephone Company, and what was alleged; and upon reading the further written submissions filed,—

The Board orders: That the British Columbia Telephone Company's tariff C.R.C. No. 7, in so far as the same provides for a change in the tolls in the company's new exchange, known as the "Point Grey Exchange," be, and it is hereby, suspended pending further hearing by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, October 23, 1924

No. 16

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Early application should be made for copies in quantities. Subscriptions should be sent in, in every case, to the Chief Accountant, Department of Public Printing and Stationery, Ottawa. Remittances to be made payable to the order of the Chief Accountant. P.O. Money or Postal Orders preferred. Cheques or drafts must be made payable at par at Ottawa. Postage Stamps will not be accepted.

In the matter of freight tariffs, Canadian Pacific Railway, C.R.C. No. E-4137; Canadian National Railway, C.R.C. E-765; Canadian Pacific Railway, C.R.C. No. W-2757; Canadian National Railway, C.R.C. No. W-391; and of various complaints against the said tariffs.

Heard at Ottawa, the 17th, 18th, 22nd, 23rd, 24th, 25th, and 26th of September, 1924.

JUDGMENT

COMMISSIONER BOYCE:

The Board's jurisdiction under the provisions of the Railway Act to adjust and remedy numerous and far-reaching complaints resulting from the filing by the Canadian Pacific and the Canadian National Railway Companies of the tariffs above described, effective July 7, 1924, is appealed to and invoked.

An outline of the rate history involved leading up to the issue of the tariffs now causing such wide dissatisfaction, and around which centre such serious traffic grievances, will be helpful before dealing with these tariffs and the rate situation in which they were made, and the effects produced thereby.

There is directly in issue, in the exercise by the Board of any of its remedial functions in the adjustment of these complaints, the question of the construction to be placed upon those clauses of the agreement entered into the 6th of September, A.D. 1897, between Her Majesty the Queen, acting in respect of the Dominion of Canada, and represented therein by the Minister of Railways and Canals, on the one part, and the Canadian Pacific Railway Company, on the other part, and which is generally known and may be referred to as the Crowsnest Pass Agreement, which relates to freight rates, and which agreement was provided for, and the conditions in the agreement as executed were specified in advance of the actual agreement, in an Act of the Parliament of Canada, passed in 1897, being 60-61 Vict., Chap. 5, intituled "An Act to authorize a Subsidy for a railway through the Crowsnest Pass." That enactment, in its terms, provided for a subsidy to the railway company towards the construction of a railway from Lethbridge, in the province of Alberta, through the Crowsnest Pass to Nelson, in the province of British Columbia, to the extent of \$11,000 per mile, and not exceeding in the whole \$3,630,000, payable, according to the terms specified in the Act; and contains the following general provision: "Provided that

an agreement between the Government and the company is first entered into in such form as the Governor in Council thinks fit, containing covenants to the following effect, that is to say." The covenants to be included in the contract are there particularly set forth, ten in number, in subsection (1) of the Act, and, in so far as the covenants so provided, to be entered into by the subsidy contract to be so approved, related to the question of rates, they are contained in subclauses (d) and (e), section 1, of that Act.

Pursuant to the conditions of the Act, the Subsidy Agreement of September 6, 1897, was entered into between Her Majesty and the railway company, and contained the covenants mentioned in clauses (d) and (e) of the enactment above set out, as well as all other covenants which the Act provided such agreement should contain.

Tariffs were filed by the railway company shortly following the execution of the agreement, which were in conformity, as to the commodities named, with the conditions (d) and (e) of the agreement; and these tariffs at that time did not conflict with any prevailing freight rates upon similar commodities, and did not prejudicially affect any other railways than the contracting railway, the Canadian Pacific Railway Company.

The conditions as to railway development, transportation costs, and traffic generally for many years were such that these rates so agreed to on the specific commodities mentioned, afforded a fair return to the railway companies using them for the service performed in the carriage of the traffic covered by them. In fact, on all commodities covered by the schedule, except apples and coal oil, reductions took place in these rates, and were maintained and in existence when the Board was created in 1903, and for long afterwards; and increases in these rates did not call for the consideration of this Board until 1917, when applications were filed by the Canadian Northern Railway Company, then operating in both western and eastern territory, and by the Canadian Pacific, the Grand Trunk, Grand Trunk Pacific, Toronto, Hamilton and Buffalo, Pere Marquette, New York Central, Michigan Central, Kettle Valley, and Great Northern Railway Companies, for a recommendation by the Board to the Governor in Council, under the War Measures Act, for a general advance in freight and passenger rates. The application of the Canadian Northern Railway Company, which was supported by accompanying statements, set forth that, under the then present revenues and rates applicable to the enterprises of the railway, it was impossible adequately to sustain the railway service, to meet needed betterments, or to meet the numerous increases in net operating costs attributable to the very substantial increased cost of fuel, coal, materials, supplies, equipment of all kinds, and wages entering into the maintenance and operation of their railways, and that substantial increases in both freight and passenger rates were, therefore, imperatively required. The applications were heard at various points throughout Canada, with the result that by a judgment of the Board, dated December 26, 1917, reported Vol. 22, Canadian Railway Cases, p. 51, the railway companies concerned were permitted to increase their general rates 15 per cent and make the specific advances therein allowed.

The effect of the Crowsnest Pass agreement of September 6, 1897, and of the Act, above cited, which provided for its terms, was considered in the judgment in the Fifteen Per Cent Increase Case. The same agreement had been incidentally referred to in a previous judgment, delivered by the late Chief Commissioner Killam, in the British Columbia Pacific Coast Cities v. Canadian Pacific Railway Company (Vancouver Interior Tolls Case), 7 Can. Ry. Cas. 125, to which cases I shall refer hereafter.

The application for this general rate increase was based upon war conditions, and resultant increased costs as mentioned in the application of the railway companies above quoted, and followed a similar increase by the Interstate Commerce Commission of June 29, 1917, in the class rates in Eastern United States territory.

Following the 15 per cent increase in rates, came an increase of 25 per cent in the United States eastern class rates, commonly known as the McAdoo Award. By Order in Council of the Canadian Government, P.C. No. 1,768, after the publication of the McAdoo Award, and following a report of the then Chief Commissioner of this Board to the Canadian Government, dated July 25, 1918, and reported in the judgments of this Board, Vol. 8, p. 277, a further general increase of 25 per cent was made effective by the Canadian Government under The War Measures Act, by Order in Council P.C. 1863, dated July 27, 1918, to Canadian railways.

When the Railway Act was consolidated and amended in 1919, there was introduced an addition, as a subsection to section 325, viz., subsection (5), which is an important factor for consideration, and which was much referred to in the argument. That amendment reads as follows:—

“(5) Notwithstanding the provisions of section three the powers given to the Board under this Act to fix, determine, and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada, whether general in application or special and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees, or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by an agreement made or entered into by the company: Provided that this subsection shall remain in force only during the period of three years from and after the date of the passing of this Act.”

This amendment, it was contended, was passed with reference to the Crowsnest Pass Agreement, which, in judgments of the Board in (a) the Coast Cities Case, 7 Can. Ry. Cas. 125, (b) the Regina Rate Case, Regina v. C.P.R. and C.N.R. Cos., 11 Can. Ry. Cas. 380; 45 S.C.R. 321; (c) the Fifteen Per Cent Increase Case, 22 Can. Ry. Cas. 49, and (d) Forty Per Cent Increase Case, 26 Can. Ry. Cas. 130, had been referred to. It was, irrespective of such contention, a measure which removed by legislation any doubts as to the Board's powers, when dealing with the question of general increases in costs of railway transportation, when such powers or its rate jurisdiction generally were in conflict with “any Act of the Parliament of Canada, whether general in application or special, and relating only to any specific railway or railways, etc.,” or as regards excusing “charges of unjust discrimination” where “such discrimination or preference is justified or required by any agreement made or entered into by the company.” The subsection was, by its terms, to continue in force only during the period of three years after the date of the passing of the Act (July 7, 1919).

It is to be observed that the additional subsection did not in any way alter or impair any jurisdiction the Board otherwise had to disregard agreements resulting in unjust discrimination in rates. The Board had decided that it had such a jurisdiction, and had exercised it in a definite and pronounced manner, e.g.,—

Crowsnest Pass Coal Co. v. C.P.R.,

8 Can. Ry. Cas., p. 33, at p. 41.

Regina Rates Case,

11 Can. Ry. Cas. 380, at pp. 391 and 394,

and has since so decided. See Lyons Fuel Supply Co. v. Algoma Central Ry. Co., Board's Judgments, Vol. VIII.

In so far as the subsection referred to Acts of Parliament, whether general or special, it is, I think, clear that there could be in contemplation and intent only those Acts, general or special, which were restrictive of the wide powers of the Board conferred upon it by Parliament by the Railway Acts since 1903. The subsection made no reference to any particular Act, nor to any particular railway, nor to any particular agreement, and of itself cannot, I think, be so interpreted. Any special significance that may be sought to ascribe to it must be judged by the plain and general wording of the subsection.

In 1920, effective May 1, a substantial increase was made to all railway employees in the United States, known as the Chicago Wage Award. This award having been adopted and made applicable to Canadian railways, thereby greatly increasing operating costs, applications were made on behalf of most of the Canadian railways for a further general increase, and upon such application, by judgment of the Board of the 6th September, 1920, reported in 26 Can. Ry. Cas. 131, the Board granted a general increase of 40 per cent in eastern freight tolls and 35 per cent in western freight tolls, 20 per cent in passenger tolls, both east and west (not to exceed 4 cents per mile), 50 per cent in sleeping and parlour car tolls, and 20 per cent in excess baggage tolls, to be effective until December 31, 1920; commencing January 1, 1921, the eastern freight toll increase to be reduced to 35 per cent and the western increase to 30 per cent. By that decision, all railways under the Board's jurisdiction were required to furnish the Board with a monthly statement of their operating revenue, with a view to readjustment if desirable of the rates so ordered.

This latter provision as to control by the Board upon the basis of costs as found by its previous judgment, is important to bear in mind with respect to what action was subsequently taken to continue in force these rates found by the Board to be fair, reasonable, and adequate.

In its disposition of the 40 per cent Increase Case, and by virtue of the amendment to section 325 by the addition of subsection 5 thereto, in the Railway Act of 1919, above referred to, all doubts created by any references in previous decisions as to the powers of the Board being in any way limited, restricted, or circumscribed by the Crownsnest Pass Agreement, or by any other agreement or statute, were removed, so that the increase, based upon an exhaustive examination by the Board as to what were fair and reasonable rates applicable to all railway companies, were so applied. General Order of the Board No. 308, dated September 9, 1920, provided that the changes in the tariffs of the companies operating steam railways, subject to the jurisdiction of the Board, as set forth in the judgment of the Chief Commissioner, which was made part of that Order, were thereby authorized by the Board.

An application was then made by the Governments of Manitoba and Saskatchewan, and others in similar interest, for the suspension of the increase in railway rates as granted by the Board's General Order, above referred to, or, alternatively, that the order be varied by reducing the increase in railway rates on lines west of Fort William to 15 per cent. That application was based upon a decision of the Privy Council, dated October 6, 1920, upon an appeal from the decision of the Board, represented by General Order No. 308, and which order on appeal referred the question as to suspension back to the Board for further consideration. Upon this reference, judgment was delivered by the Board November 22, 1920, reported in Judgments of the Board, Vol. 10, p. 429, which dealt with and justified by reference to the financial necessities of the railways, the increase in rates which had been challenged, and by reference to that judgment it will be seen that the Board's decision to increase the rates was entirely based upon its duties under the Railway Act to fix, determine, and enforce just and reasonable rates. The application was refused.

By Order in Council P.C. No. 2434, dated October 6, 1920, dismissing the appeal from General Order No. 308, above referred to, His Excellency in Council

recommended that, as conditions had probably changed materially in recent years, tending more and more to make equalization of rates practicable, the Board should conduct an inquiry at the earliest date, with a view to the establishment of rates meeting to the utmost extent possible the requirements as to equalization.

The Board held an exhaustive investigation into the subject, and held sittings throughout Canada; and upon that application, and based upon an immense amount of evidence as to rate situation gathered on such inquiry, and after full investigation and consideration of costs entering into the service, delivered its judgment dated the 30th of June, 1922, making certain changes in the rates on certain basic commodities, on coal, and on commodities moving under class and commodity rates between points east of Montreal and west of Port Arthur and Fort William, and on mountain rates as in said judgment specified; and by General Order No. 366, dated June 30, 1922, the Board required the railway companies under its jurisdiction to file tariffs giving effect to the rates so prescribed and authorized, the effective date of the said rates to be August 1, 1922.

So far, then, as the Board's general powers under the Railway Act permitted it to fix fair and reasonable rates, the Board exercised those powers, and, within its jurisdiction, by its General Order No. 308 and by General Order No. 366, approved of and authorized tariffs giving effect to fair and reasonable freight rates, after careful and exhaustive consideration and examination of all elements and factors involved in the making of such rates. These decisions of the Board, therefore, subject to any restriction which, it is contended, is imposed upon it in the Crowsnest Pass Agreement, or in any other agreement or private legislation, represented, and do represent, the Board's judgment as to what would constitute fair and reasonable rates within the meaning and scope of these orders and judgments.

Following the report of the Special Committee appointed by Parliament in 1922, to inquire into railway transportation costs, Chapter 41, 12-13 George v, was passed, which provides as follows:—

"1. Subsection five of section three hundred and twenty-five of the Railway Act, 1919, shall, notwithstanding the proviso thereof, remain in effect until the sixth day of July, 1923, and may be continued in force for a further period of one year by Order of the Governor in Council published in the *Canada Gazette*: Provided that, notwithstanding anything herein or in said subsection five contained, rates on grain and flour shall, on and from the sixth day of July, 1922, be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada, 1897."

The effect of this legislation was, as I view it, to continue for another year, or such further period as the Governor in Council might see fit, subsection 5 of section 325, with a proviso that, notwithstanding anything in the subsection contained, rates on grain and flour, on and from the 6th of July, 1922, shall be governed by the provisions of the agreement made pursuant to chapter 5 of the Statutes of Canada, 1897. The meaning of this amendment is somewhat obscure. As has been pointed out, the amendment to section 325, effected by the addition of subsection 5, did not specifically, or by any inference which could be deduced from the wording of that section, legislate with regard to any particular statute, general or special, or to any particular agreement, but was entirely general in its character; it was entirely general with regard to all such general and special Acts and all such agreements as had a limiting or restricting effect upon the general jurisdiction of the Board under the Railway Act to fix fair and reasonable rates, and which statutes or agreements the Board might otherwise consider. It was legislation in the abstract, and, in my view, went no further than to declare in effect that whatever general or private acts or agreements interfered

with the full exercise by the Board of its jurisdiction under the Railway Act, might be disregarded, and should not be binding upon the Board during the period for which the section was in force.

By the legislation of 1922, chapter 41, this general provision is continued for another year, but, by the proviso, special reference is made to the provisions of the agreement executed pursuant to the Crowsnest Pass Act to the extent of providing that rates on grain and flour shall, on and from the 6th of July, 1922, be governed by the terms of that agreement.

If there be direct legislation in the proviso governing the specific commodities of grain and flour not repugnant to the general jurisdiction upon the Board conferred to fix fair and reasonable rates upon all commodities, I would observe that the effect of the proviso appears to be that rates on the two commodities mentioned in the proviso are to be governed by the agreement, which is a statutory injunction to the Board, with respect to two commodities, to observe a particular agreement not mentioned in subsection 5 of section 325, the operation of which is extended for another year. Whether this legislation, in the few lines contained in the proviso, has the effect of so limiting and restricting the Board in the full exercise of its functions is a question which I shall discuss later on when dealing with the effect of the original Crowsnest Pass Subsidy Act and the agreement following it.

By proclamation in 1923, the provisions of the subsection (5) to section 325 of the Railway Act were extended for another year, and, notwithstanding the application to the Government by the Canadian Pacific for its continuance, no further extension of the subsection was made, and whatever was, or had been, its effect or meaning, it ceased to exist after the 6th July, 1924. At that date the rates found by the Board to be just and reasonable rates, were in force under the Orders of the Board hereinbefore referred to, and it followed as a result that the fixing by the Board of such rates on the higher basis, and in continuing them while the railways' accounts were under monthly review by the Board, was an assertion or declaration by the Board by virtue of its powers, as a rate controlling and rate fixing tribunal, that the rates so fixed were found by it under existing conditions as to costs, to be the only just and reasonable freight rates applicable, and that, as a result, any other rates, lower than those rates, were not just and reasonable, and would not give a fair and adequate return to the railways charging them, for the service involved.

This brings the record down to the causes of the present complaints.

Effective July 7, 1924, the following new tariffs of rates were voluntarily published by the railway companies named, and are now in force, viz.:—

Canadian Pacific Railway's C. R. C. No. E-4137.

Canadian National Railway's C. R. C. No. E-765.

Applying on specific commodities from various points in Eastern Canada to stations in Canada west of Westfort, Ont., as enumerated.

Canadian Pacific Railway's C. R. C. No. W-2757.

Canadian National Railway's C. R. C. No. W-391.

applying on specifically named commodities from Port Arthur, Fort William, Westfort, and Armstrong, Ont., to various stations in Canada west thereof.

These tariffs have given rise to innumerable complaints from shippers in all parts of the country from the Atlantic to the Pacific. The tariffs produce a great many freight rate anomalies, but the principal features which have given grounds for complaint may briefly be summarized as follows:—

With reference to rates between Eastern Canada and points west of Fort William, for many years prior to July 7, 1924, the whole territory from Montreal to Windsor and Sarnia, inclusive, Niagara Falls to Sudbury, all intermediate points, and all branch lines, was blanketed, that is to say, the same rate applied

from all stations within this entire area to Winnipeg and all other Western Canadian points. Thus, the manufacturer or shipper at one point in this territory was on an exact equality, from the standpoint of freight rates, with his competitor at any other point in said area.

The tariff issued by the Canadian Pacific Railway Company, effective July 7, 1924 (in compliance with their interpretation of the Crowsnest Agreement), provided for rates, on the commodities mentioned in the said agreement, only from and to stations on that company's line as existing in 1897, and under the grouping of Eastern Canadian territory as existing January 1, 1898. For example, that company's mileage on eastern lines in 1897 was approximately 3,700 miles, and in 1923, 5,200 miles; its western lines in 1897 approximated 3,600 miles, and in 1923, 9,400 miles. The Crowsnest rates are very much below—in some cases approximately 50 per cent below—the present general rate level created by changed conditions since 1897; consequently, the application of these Crowsnest rates from those stations in existence in 1897, and the continuance of the higher rates since established from all points on lines subsequently constructed (both taking the same rate previous to July 7), entirely disrupts and dislocates the freight rate structure created by the Board, and leaves of the structure only *disjecta membra*. For example, on binder twine, carloads, the rate from Hamilton and Brantford, to Winnipeg, prior to July 7, was \$1.14 per 100 pounds from both points. Effective July 7, the rate from Hamilton was reduced to 71½ cents, the rate from Brantford remaining at \$1.14. Hamilton is given Crowsnest rates, Brantford is not. Again, as between stations both of which take Crowsnest rates, disparities have been created as compared with the situation prevailing prior to July 7, for the reason that the Eastern Canadian territory, already described as being blanketed and taking the one rate, was, under the Crowsnest Agreement, split up into six groups, the lowest rate being from the Windsor group and the highest from Montreal. Taking paint as an illustration, instead of the Montreal and Windsor manufacturers being on an exact rate equality to Western Canada, as for many years past, the Windsor manufacturer's rate is now 10 cents per 100 pounds lower than that of the Montreal manufacturer. From Windsor the distance the traffic to Western Canada is hauled is 35 miles greater than from Montreal, yet the Windsor rate, under the Crowsnest Agreement, is 10 cents less than that from Montreal. These are simply two cases illustrating the conditions which apply with respect to all the commodities mentioned in the Crowsnest Agreement.

The situation complained of, therefore, is not only as between stations to which Crowsnest rates have been restored, and those to which they were not given, but also as to the disparities between the rates from stations where the Crowsnest rates have been restored.

The situation in Western Canada is equally chaotic. The rates on the commodities in question have heretofore always been so regulated and controlled by the Board so as to establish a relative basis throughout the whole Prairie territory. Since July 7, however, the Crowsnest rates have applied from Fort William and points east thereof to points on the line of the Canadian Pacific Railway as in existence in 1897, while to all other territory the higher rate level established since 1897 still governs. This means that approximately 35 per cent of the western lines of the Canadian Pacific Railway has Crowsnest rates, and the balance, 65 per cent of the mileage, has the higher rates. For example, to practically the whole territory north of the Canadian Pacific Railway Company's main line, very much higher rates apply than to the main line and those branches south thereof, in existence in 1897, although the higher rates also apply to southern branches since constructed in contiguous territory. One of the obvious results is that certain jobbing and distributing centres in Western Canada have been adversely affected, and are now unable to distribute the com-

modities named in the Crowsnest Agreement on a relative basis of freight rates within territory which is naturally tributary to them, having in mind their geographical location.

Another disturbance is the change in the "between" application of the rates. Prior to July 7, the rates on Crowsnest commodities between Eastern and Western Canada were, generally speaking, the same in both directions. The tariffs naming class rates apply "between." For instance, roofing paper is manufactured at Winnipeg, and the carload rate, on July 6, Winnipeg to Toronto (also Toronto to Winnipeg), was \$1.14 per 100 pounds. It is still \$1.14, Winnipeg to Toronto, but effective July 7, was reduced to 74 cents from Toronto to Winnipeg.

The Crowsnest rates herein referred to are westbound rates only, and do not apply east bound, or from British Columbia, or from the Maritime Provinces.

British Columbia claims the tariff of July 7 is depriving it of its markets in Western Canada, because the low Crowsnest rates have been restored from Eastern Canada to the prairies, while there is no change in the rates from British Columbia to the prairies. In other words, while there was a certain relationship between rates from British Columbia eastbound, and from Eastern Canada westbound, to prairie points, fixed from time to time under various orders of this Board, this relationship and the rate structure existing previous to July 7 has all been disrupted. The fruit industry of British Columbia was particularly stressed, and as a typical illustration of the result of the radical reduction in rates from the East, and no change in rates from the West, the present rate on fresh fruit, carloads, from Kelowna to Winnipeg, 1,209 miles, is \$1.50 per 100 pounds, while the Crowsnest rate from Hamilton to Winnipeg, 1,272 miles, is 83½ cents per 100 pounds.

Between the Maritime Provinces and Western Canada, the published through rates are built up on arbitraries or additions to the normal Montreal rate, and by reason of the much greater distance, the Maritime shipper is, under ordinary conditions, naturally at some disadvantage in the matter of freight rates, as compared with Ontario. The non-application of Crowsnest rates to Maritime province points and their restoration in Ontario has made the rate disparities previously existing so much greater that it is claimed it is now almost impossible for the Maritime province manufacturer to compete in the Western Canadian market.

The Canadian National Railway Company has only published the Canadian Pacific's Crowsnest rates from strictly competitive points in Eastern Canada to strictly competitive destination points in Western Canada, to meet the competition, and has published same as competitive rates, and these rates do not apply as maxima from or to intermediate non-competitive points on the Canadian National Railway.

There are other minor anomalies, and the disruption of the freight rate structure resulting from the tariffs in question has created a condition of chaos and rate disparities without any parallel in the history of freight rate making in Canada.

The publication of these tariffs was due to the view, evidently then held by the Canadian Pacific Railway Company, that the terms of the subsidy contract of the 6th September, 1897 (the Crowsnest Agreement), in so far as it related to rates, was binding upon it, and that, therefore, by reason of the cessation, by effluxion of time, of the suspending clause (section 325, subsection 5), applicable to all agreements, the company remained bound by the rate terms of its agreement. In taking this view, it is argued that it did so by reason of the references to the effect of such agreement in the Board's judgments in the following cases:—

Coast Cities Case, 7 Can. Ry. Cas. 125, at p. 145.

Regina v. C.P.R. and C.N.R., 11 Can. Ry. Cas. 380, at p. 391.

In *re* Increase in Passenger and Freight Tolls (15 per cent Increase Case), 22 Can. Ry. Cas. 49, at pp. 77 and 78. ;

Railway Association v. Canadian Manufacturers' Association (40 per cent Increase Case), 26 Can. Ry. Cas. 130, at pp. 145-6.

The tariffs so made, effective July 7, 1924, by the railway companies named, were not in accordance with the Board's judgments and orders previously referred to, as to what rates should be, nor were they fair and reasonable under existing conditions. Their publication by the Canadian Pacific Railway Company (in so far as they were by that company put into effect under that company's agreement of 1897) compelled all other railways in competitive territory to conform to them, to meet the unjust and unfair competition forced upon them, and which they were obliged to meet by reducing their rates below the standard fixed by the Board as just and reasonable, and thereby compelled reductions of freight rates of a wide and far-reaching character below that standard, not only by the Canadian Pacific Railway Company (which at that time seemed to recognize its contractual obligations to adhere to the contract tariff) but by the other railway companies, who were in no way bound by the contract, and in consequence of its effect, as reflected by the Canadian Pacific Railway Company's tariffs, conforming to the old agreement of 1897, were and are subjected to heavy losses, which they complain they are unable to bear, and which, but for the indirect effect upon them of the Canadian Pacific Railway Company's contract tariffs, they would be under no obligation to bear. The result is that the Board's functions under the Railway Act in fixing from time to time, after exhaustive inquiry, fair, reasonable, and adequate freight rates for all railways under its jurisdiction, are rendered futile and ineffective by the existence of an agreement, made in 1897, with one railway company, which, in its present effect, purports to fix and impose upon all railways affected, for all time, and notwithstanding changed and changing conditions, railway rates at a standard below and not in accordance with those standards of equality which this Board has found from time to time to be fair and reasonable.

Determination of the effect of the Crowsnest Pass Agreement upon the powers of this Board conferred upon it at its creation by the Railway Act of 1903 is, therefore, vital to the consideration by the Board of the extent to which it may exercise its remedial functions in the present chaotic situation, affecting rates from one end of Canada to the other, and the argument at the hearing was centred upon that question, and therefore must be dealt with.

If, as is argued by the many complainants, the provisions of the agreement are now binding upon the Board, in whole or in part, it is clear that, wide as are the powers conferred upon it by the Railway Acts of 1903, 1906, and 1919 to remedy such grievances and equalize and stabilize all rates, the Board would be restricted to the rates in the agreement specified, which, as I have shown, have the effect, in the construction placed upon it by the railways in filing the tariffs of the 7th July, of disrupting and dislocating rates equalized and settled by the Board, and disturbing industrial conditions throughout the whole of Canada.

I think that the Board's duty in the circumstances is to deal with this concrete question, which goes to the root of its general powers as a rate-controlling body.

Although the agreement of 1897 has been referred to in the previous judgments of the Board I have cited, it will, I think, be found that in none of them is the question now involved the direct and main issue. True it is that in some

of these decisions, when disposing of questions in the consideration of which the rates under the agreement were either relatively or incidentally involved, the Board dealt with those questions and applied its judgment in their adjustment in a manner which treated the rates under the agreement as being rates in force and not controlled by the Board, and in one case, the Fifteen Per Cent Case, as I shall presently show, expressed its view as to the application in law of the agreement as restrictive of the general jurisdiction of the Board, but now, when the agreement rates appear as a block to the full and unfetter exercise by the Board of its powers, it becomes necessary to review, in relation to present chaotic conditions all centering on the construction to be placed upon the agreement, the whole question as to the effect of the agreement in law as limiting and circumscribing its wide powers. I will deal with the cases cited in which the rates contracted for by the agreement were referred to.

In the Coast Cities Case, 7 Can. Ry. Cas. 125, decided May 25, 1907, which was a complaint that the rates on all classes of goods from Vancouver to interior points in British Columbia and the Northwest Territories, as far east as Calgary on the main line and to McLeod on the Crowsnest line, were discriminatory as compared with the rates on westbound traffic from Winnipeg in the same territory. The reference to the Crowsnest Agreement made by the Chief Commissioner in that judgment, is preceded by the words, "There are two minor points for consideration" (p. 145). He then refers, as the first of these points, to the Crowsnest Pass Agreement, and the Act requiring that agreement, and after describing it, proceeds (p. 146) to discuss, not the agreement or the Act by which it was required to be executed, nor the effect of either, but the effect of the tariffs of the Canadian Pacific Railway Company, filed in accordance with its covenants in that agreement, and which contained the reduced rates on the commodities included in the agreement; and proceeds (p. 146):—

"These reductions cannot be considered as having been forced upon the company, but were the result of an agreement which it chose to enter into for the purpose of obtaining a subsidy in aid of the construction of a line of railway. The agreement and the statute did not even deal with the rates from Winnipeg at all."

The learned Chief Commissioner then points out that,—

"When the statute (Crowsnest Subsidy Act) was passed, and when the agreement was made, the law prohibited unjust discrimination between localities, and, while Parliament did not *stipulate* for similar reductions over western portions of the company's railway, it should not, in my opinion, be considered as having authorized what would, if done otherwise, have produced unjust discrimination."

He concludes that the reductions so voluntarily made by the company in its tariffs then before him *did* result in such discrimination, and that the rates from Vancouver eastward, upon similar traffic carried under similar circumstances, should proportionately be reduced. The second point is not revelant.

The tariffs of only one railway, the Canadian Pacific Railway, a party to the Crowsnest Pass Agreement, were involved. No other railway was affected, and the judgment deals only with the tariffs as they stood. There was no issue as to the agreement under which the railway company had issued its tariffs, nor as to the statute prescribing the terms of that agreement; but the decision dealt with the tariffs as they stood in relation to other tariffs brought in question, and held as above.

I can see nothing in this decision upon a minor and only relative point which commits the Board to any view, one way or another, as to the restrictive form of the agreement. In the circumstances, and under conditions then existing, such an opinion was not necessary to the decision.

In the Regina Rates Case, 11 Can. Ry. Cas., p. 380, decided by this Board June 22, 1910, the judgment in the Coast Cities Case was referred to (p. 391) and quoted, and then, after referring to the nature of the Crowsnest Pass Agreement, says (p. 390):—

“This agreement has no bearing upon the point at issue in this case, except to show that rates west of Manitoba have been reduced as a result of Government intervention.”

Reference is made by the then Assistant Chief Commissioner, in delivering the judgment of the Board, to the judgment of the Board in Crowsnest Pass Coal Co. v. C.P.R., 8 Can. Ry. Cas. 33, as follows (p. 391):—

“It could not surely have been the intention of Parliament in passing section 315 of the Railway Act to permit railway companies to create different circumstances and conditions by entering into a contract with some one and so defeat the intention of the section. The ‘circumstances and conditions’ which, if not substantially similar, may justify different treatment to different points, I think must be traffic circumstances or traffic conditions; not circumstances and conditions which may be artificially created by contract. The present Chief Commissioner expressed the following opinion in the Crowsnest Pass Coal Company v. Canadian Pacific Railway Case, reported in Vol. 8 of MacMurchy & Denison’s Canadian Railway Cases, at page 41;”

and to the further dictum in that case (p. 392):—

“The Railway Act requires that under substantially similar conditions the tolls charged shall be equal to all persons, and at the same rate, whether by weight, mileage or otherwise, and any reduction or advance either directly or indirectly is expressly prohibited. No undue or unreasonable preference or advantage can be permitted to any person or company. The object of the legislation is to place everyone upon terms of absolute equality, and if agreements were permitted to be entered into for reduction in tolls or for other preferential treatment, the door would be opened wide for the defeat of the Act, and the Board would be called upon to struggle with all sorts of conditions, opinions, and complications in the determination of such cases.”

It would not appear, therefore, that in the Regina Case the Board decided upon the extent to which, if at all, the Crowsnest Pass Agreement was binding upon it in all cases, or that it limited and restricted its jurisdiction over rates generally to the extent now contended. The judgment of the Supreme Court in appeal, 45 S.C.R., p. 321, seems to go to the length only of saying that such an agreement as that directly in question to the issue, viz., the Canadian Northern Railway Company’s Manitoba Agreement, was a circumstance which the Board should regard in deciding the main question.

In the Fifteen Per Cent Rate Case—22 Can. Ry. Cas., p. 49, decided December 26, 1917, the agreement was again referred to in the judgment of the then Chief Commissioner (Sir Henry Drayton). This was a general application for an increase in passenger and freight tolls throughout Canada, on the ground of the increase in operating expenses, owing largely to war conditions. The result was that all railways subject to the jurisdiction of the Board were permitted to increase their general rates 15 per cent with some specific advances named. The contention of Mr. Pitblado, K.C., who appeared for the Manitoba Government, was that the increase asked for would violate two agreements, viz., the Crowsnest Pass Agreement made with the Canadian Pacific, in consideration of subsidy, and the agreement of the Canadian Northern Railway Company with the Manitoba Government (Manitoba Statutes, 1901, ch. 39), made in consideration of a bond guarantee.

The remarks of the then Chief Commissioner as to this (the Crowsnest contract) appear at pp. 57, 58, 77 (foot), 78, 83, and 84, and as to the Manitoba-C.N.R. Agreement, at pp. 60 and 61. As to the former agreement, the learned Chief Commissioner held, in effect, that in any increase of rates, the *Canadian Pacific* was held down to the rate clauses of the agreement with the Dominion Government, holding that the Crowsnest Pass Subsidy Act, which, as a condition of the subsidy, required the agreement to be made, was a Special Act, "relating to the same subject matter," the provisions of which must be taken to override the provisions of the Railway Act.

The Canadian Northern, Grand Trunk, and Grand Trunk Pacific Railways (now merged into the Canadian National System), and all other railways affected by the Crowsnest Rates in competitive territory, were, although no parties to the agreement made by the Canadian Pacific Railway Company, compelled to reduce their rates to the scale of the agreement, and to publish rates which were lower than the rates the Board would have permitted them to charge as fair and reasonable rates, had they not been held down by the agreement. But as to the Manitoba-C.N.R. Agreement, he observed (p. 61) that the effect of the agreement, apart altogether from statutory limitations of the Board, must be considered, in view of section 3 of 1 Edward VII, chapter 53 (Canadian Act), passed to give greater effect to the provincial Act, by virtue of section 6 of the Railway Act of Canada. the judgments of the Board in *Crowsnest Pass Coal Co. v. C.P.R.*, 8 Can. Ry. Cas. 33, at p. 41; and in the *Regina Rates Case*, 11 Can. Ry. Cas. 380, at p. 391, were referred to (p. 61). At p. 62 he says:—

"To now give effect to the Canadian Northern-Manitoba Agreement and confine its operation to Manitoba, would again restore the discrimination which had been found (*Regina Rates Case*) to exist as against Saskatchewan and Alberta".

And as a result, his opinion was that the Manitoba Agreement did not conclude the issue.

At p. 63 of the judgment, the Chief Commissioner holds as follows:—

"The whole tariff situation and railway subject is surrounded with much difficulty, but some things are at least clear. Among them, it is clearly the duty of the Board to allow fair and just rates to carriers for the service they perform. It is also clear that the Board can neither order nor enforce rates which are unremunerative to the carriers without infringing the principle of the Railway Act by denying carriers a fair and just rate. No enforced unremunerative rate can be said to be just to the carriers."

And at p. 67, in discussing the effect of rate making by contract generally, he observes that as to special contracts with shippers at unfairly high rates, or giving favoured shippers unduly low rates,—

"in either instance, the object of the Act (Railway Act), which is to secure uniformity just as much as reasonableness of rates, would be defeated."

And at p. 67,—

"An unduly low rate constitutes an unreasonable rate, just as much as an unduly high one, and the question of whether a rate is unduly low or unduly high can only be established with a knowledge of the cost entailed by the service, which must from time to time vary;"

and at p. 68, after further considering the effect of improvident or unfair contracts, he says:—

"It is also apparent that an agreement which reserves an unremunerative rate applicable in the one district, involves a discrimination as against other districts where traffic and operating conditions are similar, and directly infringes on the provisions of the Act requiring uniformity in rates."

While the language of the Chief Commissioner in the Fifteen Per Cent Case is unequivocal and definite in the expression of his view as to the binding effect upon this Board of the Crowsnest Pass Agreement, it is to be borne in mind that the effect of such agreement was not the *ratio decidendi* of the judgment, but dealt only with one incidental matter relative to the main question. The Crowsnest Agreement was not the main issue, and there was no argument directed against the view stated in the judgment as to its effect in law, under all conditions. The conditions with which the Board is now confronted are, as pointed out, conditions applicable, more or less to, or seriously affecting all, railways under the jurisdiction of the Board, also manufacturers and dealers, and the public generally, throughout Canada, and the storm centre of the widespread disturbance is the Crowsnest Pass Agreement. These conditions, which have taken new form and become aggravated since the Fifteen Per Cent Case was decided, call for the general application by this Board of those principles as to maintaining uniformity and equality of rates on a basis which will also allow to all carriers fair and just remuneration for the services they perform, which the then Chief Commissioner relied on, and which are specially pertinent and applicable as broad and just principles (entrusted by Parliament to this Board under the Railway Act to administer and apply), to the general upheaval and disorganization of rate structure which this Board is now asked to adjust, and which could not have been contemplated, I suggest, by the then Chief Commissioner in expressing the opinion he did as to the binding effect of the agreement. I suggest, with great respect, that in arriving at the decision he did, the then Chief Commissioner was not referring to, nor did he have before him, decisions of higher courts binding upon this Board, to which I shall presently refer, and which, especially in the circumstances now presented, where the general jurisdiction conferred upon the Board by the Railway Act is threatened with paralysis, would, I suggest, with equal respect, have called for graver consideration of a question of such wide and far-reaching importance, affecting, as it undoubtedly does, not the interests of the contracting railway alone, but those of the railways of the Canadian public generally, none of whose interests should be prejudicially affected by a rate contract by one railway company, without much more anxious consideration than for an adjustment of the issue then before it, it was necessary to bestow.

In *Railway Association of Canada v. Canadian Manufacturers' Association* (Forty Per cent Increase Case), 26 Can. Ry. Cas., p. 130, the late Chief Commissioner (Hon. F. B. Carvell) referred only, at the close of his judgment (p. 145, at top of p. 146), to the amendment to section 325 of the Railway Act of 1919, which was expiring July 6, 1922, and without in any way expressing any opinion as to its application to any particular conditions, limited the application of certain increases to July 1, 1922. Doubtless he had in mind the Crowsnest Pass Agreement as being the subject of such amended section. If he had, he did not so express himself, neither, as I had pointed out, does that amendment so specify. Here again the reference was *per curiam*, and only incidentally concerned with the main question then before the Board.

Except as to a variation in the Regina Case by the Supreme Court of Canada (45 S.C.R. 321) in a manner not directly involving the matters now before the Board, that court has not been called upon to express an opinion on the main issue now involved in this case; and if the decision of this Board should in future, come under review, the whole issue may be presented in the light of all the changed conditions and complexities now presented to us.

I am, therefore, of opinion that, while it is desirable and expedient, as far as may be practicable, and according to the requirements of each case, for the Board to follow its previous decisions where relevant, the present issue calls for the fullest special consideration, and the Board would be not only amply justified in reviewing its previous decisions, but it would be its duty so to do, in order that the whole question of the application of this agreement, now directly in issue before it, should be considered with reference to greatly changed conditions, interests of the public, and of other railways, and the preservation of industries, and in the light of decisions of great weight and not referred to in the previous decision.

The doctrine *stare decisis* is not, I think binding upon us. That doctrine is not always to be relied upon, the Courts often find it necessary to overrule cases which have been decided contrary to principle. It should not be pressed too far. Bouvier's Law Dictionary, p. 1028.

The decisions of the Board must necessarily change with changed and changing conditions. Section 51 of the Railway Act, 1919, expressly reserves that power to us, and from the nature of the wide jurisdiction conferred upon the Board, and the necessity of meeting new conditions and problems as they arise, involves changes of remedy to meet particular conditions, and in order that there may be the widest discretion and latitude exercised and applied according to the conditions in each case presented to the Board.

I think, therefore, that the Board is called upon to deal with the issue as it is presented to us now, and consider the terms and effect of the Crowsnest Pass Subsidy Agreement as the main issue and in relation to conditions as presented to us on these applications for relief from a disorder of rates which is intolerable. The Board, during a protracted sitting, has heard evidence and exhaustive arguments by counsel representing interests of various kinds, affected by these rates, from Atlantic to Pacific, centred upon this question as the main and controlling factor in the present rate upheaval.

The state of the law respecting rate regulation and control existing at the time the Crowsnest Pass Subsidy Act was passed in 1897 by the Parliament of Canada, and at the subsequent date, September 6, 1897, when the Subsidy Agreement now in question was made, may usefully be referred to.

The Canadian Pacific Railway Act, 44 Victoria, chapter 1, is the Special Act incorporating that company. It is in three parts, 1st, a contract between Her Majesty and the company for the construction of the railway; 2nd, the Act, declaring (section 1) that the contract, copy attached, was approved and ratified, and the Government authorized to perform and carry out the conditions of it according to their purport; and 3rd, the Charter of Incorporation, a schedule to the Act, and by the Act (section 2) declared to have, with Order in Council relating to it, force and effect as if it were an Act of the Parliament of Canada, and held to be an Act of incorporation within the meaning of the contract.

By clause 17 of the charter, the provisions of the Consolidated Railway Act, 1879, in so far as applicable and not inconsistent, were declared applicable and incorporated with the charter "save and except as hereinafter provided."

Clause 17 of the Railway Act, 1897, provided, subsection 1, that tolls should from time to time be *fixed and regulated* by the by-laws of the company, or by the directors, if thereunto authorized by the by-laws; subsection 6, that all or any of the tolls might be by any by-law reduced and again raised "as often as deemed necessary for the interests of the undertaking," subject, subsection 9, to approval of the Governor in Council after publication of the by-law; and that, subsection 10, every by-law fixing and regulating tolls shall be subject to revision by the Governor in Council from time to time; subsection 11, that parliament might, from time to time reduce the tolls, "*but not without the con-*

sent of the company, so as to produce less than fifteen per cent per annum profit on the capital actually expended in its construction, nor unless upon examination made by the Minister of Public Works of the amount received and expended by the company, the net income from all sources for the year then last passed is found to have exceeded fifteen per cent upon the capital so expended."

By the Canadian Pacific Railway Company's Charter, section 20, the limit of reduction of tolls by Parliament, fixed by section 17 of the Railway Act of 1879 at 15 per cent on the capital expended, was fixed at 10 per cent, which it was stipulated should be on the net income, and the subsection closes as follows:—

"And the exercise by the Governor in Council of the power of reducing the tolls of the Company as provided by the tenth subsection of said section seventeen is hereby limited to the same extent with relation to the profit of the company, and to its net revenue, as that to which *the power of Parliament to reduce tolls is limited* by said subsection eleven as hereby amended."

It will be seen that the amendment to the Special Act of the Canadian Pacific Railway Company restricted the power of the Governor in Council, reserved under subsection 10 of section 17 of the Railway Act, 1879, to revise tolls fixed or regulated by by-laws of the company, in the same way as by subsection 11 of the same section the powers of Parliament to reduce tolls was restricted to the ten per cent basis, as in the amending clause is specified.

The power of revision and of reducing tolls by the Governor in Council (within the 10 per cent limitation) reserved by the Railway Act, section 17, subsection 10, being removed, as well as that of Parliament, the railway company was, as to fixing, regulating, and revising its rates, left free from any interference by Parliament or the Governor in Council as to reductions beyond the 10 per cent limitation, without the consent of the company. Parliament, therefore, deprived itself of the power to legislate any reduction of the tolls of the company below the prescribed minimum.

When the Railway Act of 1888 was passed, these provisions and powers in the Special Act appear to be distinctly preserved to the company and excepted from the operation of the general Act by section 6 (see section 2 (*t*)), and by section 223, which specially excepts the provisions of the Special Act. The qualifying words in section 223 of the 1888 Act, "subject to the provisions and restrictions in this and the Special Act contained," were left out of the corresponding and consolidated section—251—of the new Act of 1903, with effect presently referred to.

It would seem, therefore, that when the Government, in 1897, was negotiating with the railway company the terms of the subsidy contract for the Crowsnest line, and desired to impose upon the company, as one of the conditions of the subsidy agreement, the fixing and reduction of freight rates, it was confronted by the difficulty that, as the law then stood, except "*with the consent of the company*," Parliament could not without special legislation, compel any reduction of those rates, except subject to the limitations as to the 10 per cent return specified in section 20 of the company's charter, which was part of the Special Act, that is, Parliament had stripped itself of the power to legislate, and the Governor in Council of the power to order, a reduction of rates without the consent of the company, where such reduction would be, or might be, within the limitations it had placed upon its own powers and those of the Governor in Council in that respect. If it had decided to legislate reduction of rates, it could have done so within and subject to that limitation, but the difficulty it then had to meet, in the absence of special legislation overcoming it, was that any such reductions, so effected by legislation, could only be in force so long as they were within the 10 per cent limitation, and the accounts of the company would have

to be readily available at all times for the purposes of the periodical, frequent, and searching scrutiny by the Government to determine whether the net return of 10 per cent had or had not been exceeded; and as the revenues of the company and its financial condition were constantly fluctuating, the rates which it was desired permanently to fix, at least as maximum rates, might be ultra vires of Parliament one year and intra vires the next, in force for a time, then inapplicable, dependent upon the showing in the accounts of the company and the result of its profits on its capital expenditure. There could be no stability in such rates, and what the Government evidently had in mind was to fix and stabilize the rates and determine the maxima which those rates should not exceed as one of the several conditions of the Subsidy Agreement.

Evidently, it would appear, the Government of that day decided not to ask Parliament to legislate the control of rates, but to obtain the agreement of the company under the provisions of subsection 11 of section 17 of the Railway Act, 1879, and section 20 of the charter, which required the consent of the company to reductions within the limitation of 10 per cent, and, therefore, sought power from Parliament, in the form of the Act, 60-61 Victoria, capital 5, "An Act to authorize a subsidy for a railway through the Crowsnest Pass," by the terms of which Act nothing was legislated for except the power from Parliament to the Governor in Council to grant aid to the railway company by way of subsidy, as stated, and with the following proviso:—

"Provided that an agreement between the Government and the Company is first entered into in such form as the Governor in Council thinks fit, containing covenants to the following effect", etc.

The whole transaction was incomplete, and was left to be settled and completed by an agreement, the terms of which were generally ("to the following effect") prescribed, between the Government and the company, and I think it is clear that the effect of the legislation was, in so far as it provided for an agreement by the company, to reduce its rates, that Parliament provided for rate reduction being effected by an agreement, or "consent of the company", which, for the reasons I have stated as to the state of the law at the time, it could not effectively enforce by legislation.

The agreement was executed and the tariffs were published under it, the subsidy was paid, and the line was built and put and maintained in operation, all in terms of the contract. When it is urged that the statute just referred to was and is a Special Act "relating to the same subject matter" as the Railway Act, so as to bind the general jurisdiction of this Board, I am a little in doubt as to how such an argument, strongly pressed upon us, can be supported in view of the conditions I have stated.

The statute imposed no duty upon the company with respect to rate reduction or rate fixing, except, as a term of obtaining a subsidy, to *contract* for such reductions. The statute did not bring the rates into existence. The statute became law on June 29, 1897. No rate reduction, no change in rates, was thereby effected, the rates remained as they were, notwithstanding the statute, until not only the agreement dated September 6 following had been executed, but until the covenants in the agreement, in so far as they related to rates, had been performed by the filing of tariffs, effective January 1 following.

If the Subsidy Agreement had never been executed, could it have been argued that because the statute provided for its execution as a term of the subsidy, and that it should contain, *inter alia*, provision and covenants to reduce railway rates, that the statute and not the agreement provided the rates, or that the statute, then, was a Special Act governing rates? And because the rates were contracted for in solemn form, does it have statutory effect, as a Special Act, because in a statute which, in its terms, legislated for something entirely *outside* the Railway Act, then or since in force (*viz.*, the grant by the Government of

a subsidy to a railway company to aid in the construction of another line of railway), and provided that certain conditions should first be the subject of covenant by an agreement subsequently to be executed? The test as to whether the rates were reduced to the scale in contemplation by Special Act "relating to the same subject matter" as the Railway Act, or as to anything in the Railway Act, surely lies in the answer to the question as to whether these rates were the creature of the statute or the result of contractual obligation. There was no declaration in the statute that the terms of the agreement, if and when made, should have the force of a Special Act under the Railway Act. It did not legislate the rates into existence, I think, by reason of its limited powers to do so, and of the uncertainties attendant, at a future time, in their enforcement. The rates, therefore, appear to have their origin in covenant, not in a statute, providing, conditionally, that such a covenant should be made.

When the Railway Act of 1903 was passed, there was inaugurated for the first time a sweeping change with respect to control of Dominion railways in the creation of this Board, endowed as it was with the widest powers possible. In the language of a judgment of the Supreme Court of Canada:—

"Extraordinary powers, far exceeding any existing in the Railway Acts of any other country, are given to the Railway Board." . . . "Unless it can be shown that the Board has no jurisdiction or acted contrary to the Railway Act, this court cannot interfere; for the Board can do almost anything in relation to railways, except when prohibited by Parliament."

Grand Trunk and Canadian Pacific Railway Companies v. City of Toronto, 42 S.C.R., p. 613, Girouard, J; 11 Can. Ry. Cas. 38, at pp. 49-50, and on appeal to the Privy Council (1911) A.C. 461, at p. 471, Lord Atkinson says of this jurisdiction:—

"The Railway Board is constituted by the Railway Act of 1903 (3 Edward 7, chapter 58). By section 26 very extensive powers are given to them as to the orders they may make affecting the rights and obligations of railway companies. For the purpose of exercising their jurisdiction they are a court of record, and have all the powers of a superior court."

By that Act, and within its terms, and subject only to excepted jurisdiction expressed in it, the administration of the Act was committed by Parliament to this Board with the plenary powers set forth in section 23, which may be exercised, it will be noted, as well as regards the general Act, as to Special Acts, etc., etc.

The powers conferred upon the Board as a statutory created body for enforcing and administering the functions bestowed upon it are unlimited in character, unless, as stated by the Supreme Court, *ibid*, "it can be shown that the Board has no jurisdiction."

The intention to except from the wide jurisdiction thus conferred, any subject otherwise included in it, must show itself in plain terms from that Act itself.

The application of the Act by section 3 is general and comprehensive. It is to be "incorporated and construed as one Act, with the 'Special Act,' subject as herein provided." Section 4 provides that any section of the Act may by any Special Act passed by the Parliament of Canada, be excepted from incorporation therewith, or may be extended, limited, or qualified, and concludes: "It shall be sufficient, for the purposes of this section, to refer to any section of this Act by its number only."

The Act of 1888, in force at the time the Crowsnest Subsidy Act was passed, did not contain this provision, but section 3 of that Act (1888) provides:—

“3. This Act, subject to any *express provisions* of the Special Act and to the exception hereinafter mentioned, applies to all persons, companies, and railways within the legislative authority of the Parliament of Canada, except Government railways.”

This qualification does not appear, significantly, in the corresponding section (3) of the 1903 Act; and the exception as to the Special Act is contained in section 6 of that Act. Section 5 of the Act of 1903 is a combination of sections 5 and 6 of the Act of 1888, with some changes, which may shortly be referred to.

Then if, as was urged upon us at the hearing by counsel for certain of the numerous complainants, the Subsidy Act of 1897 was a “Special Act,” and as such limited or qualified the corresponding provision of the general Act, it must be a Special Act contemplated by section 5 of the Act of 1903, which reads as follows:—

“5. If in any Special Act heretofore passed by the Parliament of Canada it is enacted that any provision of the General Railway Act in force at the time of the passing of such Special Act, is excepted from incorporation therewith, or if the application of any such provision is, by such Special Act, extended, limited, or qualified, the corresponding provision of this Act shall be taken to be excepted, extended, limited, or qualified in like manner; and, unless otherwise expressly provided in this Act, where the provisions of this Act and of any Special Act passed by the Parliament of Canada relate to the same subject-matter, the provisions of the Special Act shall be taken to over-ride the provisions of this Act in so far as is necessary to give effect to such Special Act.”

In the light of my comment upon the express nature of the Subsidy Act, I do not find in that Act the exceptions provided by section 5, above cited.

“Special Act,” by section 2 (*t*) of the 1888 Act, means any Act (*a*) under which the company has authority to construct or operate a railway; and (*b*) which (Special Act) is enacted with special reference to such railway, and includes all such Acts.

The Subsidy Act of 1897 gave the Canadian Pacific Railway Company no authority “to construct or operate a railway.” That company already had that authority from Parliament in its Special Acts, and the Subsidy Act provided only financial means to aid, on the terms of an agreement to be executed, construction and operation of such railway. Neither is the latter part of the interpretation section applicable to the Canadian Pacific Railway Company, which had then constructed and was operating certain lines, and desired to treat with the Government for aid to build another one. There was no “*special reference*” to a railway, and in its scope and object, the provisions of the Subsidy Act of 1897, of itself, did not come into conflict with any of the provisions of the Railway Act. Under similar circumstances the same words were held by the Board to mean “construction or operation” of the railway as in the context. *G.T.R. and C.P.R. v. City of Toronto*, 11 Can. Ry. Cas. at p. 42; 42 S.C.R., p. 613, at p. 686; (1911) A.C. 461.

The Act of 1897 did not validate a contract—it made provision for one to be subsequently executed. If it had validated a contract, it would still, for that reason, not necessarily be a Special Act. See *G.T.R. and C.P.R. v. City of Toronto*, *ibid*, Davies, J., at pp. 626-627.

The interpretation of the term “Special Act” in the Railway Act of 1888 was carried into the Act of 1903, word for word, with the following addi-

tion; "and where such authority is derived from any letters patent granted under any Act, such letters patent shall be deemed to form part of such Act."

I have referred, in this respect, to both the 1888 and 1903 Railway Acts, the one in force when the 1897 Subsidy Act was passed, and the other creating this Board, in order to show that while the legislation of 1897 was not a "Special Act" within the interpretation of that term in the 1888 Act, there was, in the 1903 Act, no change made in the interpretation of the terms such as would tend to broaden that interpretation and embrace the Act of 1897, and indicate an intention to provide for any such exception or limitation of the full powers of the Board conferred by the Act of 1903 as would favour the construction now pressed upon us.

But the words added in the interpretation of the term "Special Act," in the 1903 Act, section 2 (*w*), may have some significance when, as I have shown, the powers of Parliament as to full control of rates of the Canadian Pacific Railway Company were subject to limitation. That company was incorporated by charter—see section 2 of Canadian Pacific Railway Act of 1881—and the non-extension of the interpretation of the term "Special Act" in the 1903 Act, except to include companies incorporated by charter, might be significant of an intention, in framing the Act of 1903, to leave no doubt as to that company being subject to the full jurisdiction of the Board under section 23 of that Act, *where that full jurisdiction as to rates did not exist in the Government.*

There is some difference of language used in embodying, in section 5 of the Act of 1903, what was contained in sections 5 and 6 of the Act of 1888, the former of which sections is not relevant.

Section 6 of the Act of 1888 reads as follows:—

"6. If in any Special Act it is provided that any provisions of any general Railway Act in force at the time of the passing of the special Act is excepted from incorporation therewith, or if the application of any such provision is extended, limited, or qualified, the corresponding provision of this Act shall be excepted, extended, limited, or qualified in like manner."

This section refers to and includes "any Special Act," while in section 5 of the Act of 1903 the language used is, "any Special Act heretofore passed by Parliament". In the 1888 Act, the word is "provided," while in the 1903 Act it is "enacted," and contains the added prefaced sentence, "and unless otherwise expressly provided in this Act," etc. The first part of section 5, 1903 Act, is not applicable. It could not be contended that the Act of 1897, even though it were a "Special Act," *enacted* that any provisions of the general Railway Act *in force at the time of the passing of such Special Act*, is incorporated therewith. The remainder of that section is to be considered.

If the Act of 1897 *was* a Special Act, did its operation over-ride the provisions of the General Act? It is clear, as a result of the qualifying words prefacing the additional words in section 5 of the 1903 Act, that not every Special Act was to over-ride the provisions of the general Act. "Unless otherwise expressly provided by this Act," are qualifying words, indicating, I think, that the provisions of the general Act in carrying out the broad policy of railway control by this Board should be followed where such provision was "express" as to "*this Act.*"

Now as to tolls and tariffs under the provisions of the Act of 1903, the following sections of that Act may be referred to as indicating that the words "this Act," where they appear therein, are intended to tie down the enactment or provision to the general Act, not leaving it open to a variety of interpretations by Special Acts.

Railway Act, 1903, section 251—toll section. No toll to be charged until a by-law is passed, etc., "*nor shall the company charge, levy, or collect any*

money for any services as a common carrier except under the provisions of this Act," which would indicate that full and complete control of rates was to be regulated by *this Act*, with a direct prohibition against the company collecting any money for any services as a common carrier, except under the provisions of "*this Act*." I think this provides complete control by the Railway Commission, then constituted, over tolls—that is "*charges for any services as a common carrier*." It is a definite legislative injunction, and admits of no exception or qualification.

Section 252, relating to discrimination in tolls, opens with the words, "such tolls," i.e., the tolls charged under a by-law authorizing the preparation and issue of tariffs of such tolls "*approved by the Board under the provisions of this Act*." It ties the whole of the section with its most important provisions as to equality and prohibition of unjust discrimination, expressly, down to "*this Act*,"—the Act of 1903, without equivocation or exception, and by the word "except" permits of no qualification by a Special Act or otherwise. The authority and power of the newly constituted Board is made supreme and paramount, as is the intent of the Act generally, subject to exceptions, where specifically made, and to review and appeal.

Section 253, by provision in subsection 2, is also tied down to section 252 by the words, "*The Board may determine whether there has been unjust discrimination*," etc., "*within the meaning of this Act*, or whether, in any case, the company has complied with the provisions of *this and the last preceding section*, and may, by regulation, declare," etc., "what shall constitute unjust or unreasonable preferences," etc., within the meaning of *this Act*, or what shall constitute compliance or non-compliance "*with the provisions of this and the last preceding section*."

Section 254 is enacted to confer further power on the Board in dealing with tolls or charges referred to in sections 251 and 252. There again, subsection 3, the words, "*The provisions of this Act*," by express provision for the important subjects dealt with, exclude the application of any Special Act under section 5.

I do not think it necessary to multiply examples, but I will refer to one more section.

Section 257.—"The Board may disallow any tariff or any portion thereof which it considers to be unjust or unreasonable, or *contrary to any of the provisions of this Act*." By sections 251, 252, 253, and 254, the preparation and review of such tariffs for such tolls are made expressly subject to the Board's jurisdiction—by *this* section the Board may disallow such tariffs or parts thereof which are prepared," contrary to "*any of the provisions of this Act*."

In the face of this new legislation, passed to stabilize a disordered condition of railway rates, and which provided, after careful enquiry and report upon traffic and rate conditions by eminently qualified experts, for the establishment and constitution of an independent tribunal for the administration of the new Railway Act framed and designed, *inter alia*, to control railway rates on a basis of equality and fairness, and aimed at the evils of unjust discrimination, undue preference, and kindred evils which constituted the mischief legislated to correct; and in providing in that tribunal and through its experts, at great expense to the people of this country, broad remedial jurisdiction and appropriate means of readily adjusting all grievances as they arise; and of dealing with all conditions of traffic according to changed and changing conditions from time to time, with a view to equalizing, stabilizing, rate conditions upon the principles of fairness, reasonableness, and adequate return applicable to rates of all railways, with favours to none—can there be found, in this legislation, any trace of an intent to reserve from the jurisdiction, so broadly conferred upon the Board, special rates with one railway company made six years before, and to fix those rates for all time, upon this country, compelling other railways, not

parties to the contract creating them, and whose lines, now affected, were not then built, to suffer losses and bring about a rate convulsion and a condition or rate chaos such as the Board now has presented to it, and which centres round the contention that such reservation of contract rates was made by Parliament in passing the 1903 Act? Such an intention would not only be wholly inconsistent with the true intent, spirit, and meaning of that general legislation, which, I think, in its terms and scope, permits of no such qualifications or limitation, but would be repugnant to the very clear intention of Parliament in providing for an altogether new method of broad control of all such difficulties which constantly arise from time to time, as rates vary with changing conditions. I cannot accept any such conclusion. It is, I think, rejected by the legislation itself. The language of Lord Atkinson, in delivering the judgment of the Judicial Committee of the Privy Council in *C.P.R. v. Toronto Corporation and G.T.R. Co.* (1911) A.C. 461, at p. 479 (a case not before the Board in the Fifteen Per Cent Case, but the facts of which are similar to those now before us), I think, supports such a conclusion. He says:—

“But though the Act empowers the companies to construct their works and operate their railways in the way proposed, it does not enact that the works it authorized shall, if made, never be altered, no matter how surrounding circumstances may change. To give to it such a construction would result in paralyzing both the committee and the Board and in defeating entirely the object of this remedial statute the Railway Act of 1906.”

See also *Winnipeg v. Winnipeg Electric Ry. Co.*, 31 Man. L.R., p. 131, at pp. 152 *et seq.* Judgment of Dennistoun, J. A., at pp. 165 *et seq.*

C.P.R. v. City of Toronto and Grand Trunk Ry. Co. (1911), A.C., at p. 479: “Now section 3 enacts that where the provisions of the Act of 1906 and of any special Act passed by the Parliament of Canada relate to the same subject-matter, the provisions of the Special Act so far as is necessary to give effect to it are to be taken to over-ride the provisions of the Act of 1906. If the subject-matter of the Special Act and that of section 238 of the Act of 1906, as amended, were the same, then there would undoubtedly be a conflict between the two enactments; but they are not the same; the specified works, the power to construct and use them, form the subject-matter of this Special Act. The subject-matter of section 238 is the control of the Board over the railway companies, and the power conferred upon it to require the companies to construct such works as it may deem necessary for the protection and convenience of the public. These are wholly different matters. The two statutes can stand together. Effect can be given to each. There is no conflict between their provisions, such as is contemplated by section 3. Section 3 consequently does not restrict in any way the power of the Board.”

In his reasons for judgment in *City of Lethbridge v. Western Canada Power Co.* (1924), D.L.R., Vol. 3, p. 648, Anglin, J., at p. 1060, says:—

“The avowed intention of the legislature was that the Board should exercise general supervision over all public utilities;”

and at p. 1061:—

“Out of respect to the legislature and to carry into effect the spirit, if not the letter, of its policy, as expressed in the Public Utilities Act, the courts, although they may not have been denuded of jurisdiction to entertain such an action as that now before us, should, I think, decline to exercise that jurisdiction, if they possess it, and should relegate the parties to the Board which the legislature has constituted to deal with such cases and has clothed with powers adequate to enable it to do full and complete justice in the premises.”

On the further argument before the Alberta Supreme Court (1924) 3 D.L.R., at p. 651, Hyndman, J. A., in his judgment, says:—

“It would appear to me, and also as I understood him, counsel for the company admitted that, regardless of agreement, so long as the utility exists, the Board's right and power to regulate all its operations and services to the public are supreme.”

Clarke, J. A., at p. 654:—

“My conclusion is that the Board had jurisdiction to consider the matters of supply and rates, etc., and to give such effect to them as they thought proper. If it should appear that the giving of a full supply to the city would have the effect of depriving the other municipalities of the supply they are entitled to under their agreements, then surely the Board would have some discretion in refusing the unconditional order asked for by the city, and I think that if the result of the order made by the Board is to compel the company, in order to fulfil its agreements with the different municipalities, to incur abnormal expenditures of capital not contemplated when the agreements were entered into, under the wide powers given by the Act—the Board had power to fix a rate appropriate to the changed conditions.”

Then the effect of the Crowsnest Subsidy Act, if it be a Special Act, and if its provisions are in any way a block to, or a limitation of, the otherwise free and unfettered jurisdiction of the Board, upon railways not a party to nor interested in the treaty that it represented, must be considered. The agreement represented by it, and which, it is contended, makes the Act, in strange combination with an agreement not then *in esse*, but merely the creature of a condition, a Special Act, may be good *inter partes*, but what construction is to be placed upon it when considered from the point of view of its effect upon those third parties whose interests are undoubtedly prejudicially affected by its terms? Take, as one outstanding instance presented, the position of the Canadian National System, whose rates and revenues suffer in respect of the commodity list in the agreement, more or less over its entire and vast network of railways from Halifax to Vancouver. It is not only entitled to fair and reasonable rates, but has been awarded them, but cannot charge them by reason of the existence of an agreement to which it and its predecessors were strangers. The judgment in the Fifteen Per Cent Case (22 Can. Ry. Cas. 63) declares (a) that the Canadian Northern Railway, one of its acquired railways, are entitled to, but cannot obtain, fair, reasonable, and adequate rates for the traffic carried of the classes in the Crowsnest agreements, and because of it. It is further held in that case that no rate is fair and reasonable which is unremunerative (Fifteen Per Cent Increase Case, p. 60). In the Forty Per Cent Increase Case (26 Can. Ry. Cas.), this Board held that Canadian National rates were not fair and reasonable, being inadequate; and applied the increase to them. But that remedy is a myth and a phantasy if, when awarded those fair and reasonable rates by this Board, the railway entitled to them cannot obtain them or charge them as regards traffic in competitive territory where it is held down to the low competitive rate in territory, and on commodities, to which the Crowsnest Agreement applies. The Canadian National Railways, and every other railway not a party to the Crowsnest Agreement (were it binding on this Board), are entitled to demand from this Board that fair and reasonable scale of rates. They were awarded them, and are entitled to charge them, all to no purpose, because of the effect of this agreement forcing them to meet the competitive agreement rates of the Canadian Pacific. To persist in a contention that such rates should be applied to, e.g., the Canadian National Railways, is to claim a preference. If the

Board is bound by the Canadian Pacific Railway contract of 1897, and, while being so bound, the Canadian National Railways could obtain for their railway services upon the listed commodities, the rates adequate, fair, and reasonable for such service, to which this Board has found them entitled, the remedy would not be difficult, but that is one of the many anomalies presented to us in these complaints.

Then, no remedy being possible by that method, the Board's jurisdiction and powers of adjustment—if the contentions of complainants were sound—being paralyzed, what construction must be placed upon a contract, or a statute, if it be such, which, for the sake of argument merely, we may admit is good *inter partes* as regards the third parties?

In *ex parte* Corbett, 14 Ch. Div. 122, at p. 29, Jessel, M.R., says:—

“I think also that there is a general rule of construction of statutes, which is applicable to this matter, namely, that unless you are obliged to do so, you must not suppose that the legislature intended to do a palpable injustice.”

In *East and West India Dock Co. v. Hill*, 22 Ch. Div., at p. 23, Lord Selborne, in delivering the judgment which was concurred in by Jessel, M.R., and Cotton, L.J., said:—

“I have said that there is in this case undoubted difficulty, but on principle it is certainly desirable in construing the statutes, if it be possible, to avoid extending it to collateral effects and consequences beyond the scope of the general object and policy of the statute itself, and injurious to third parties with whose interests the statute need not, and does not, profess to directly deal. It seems quite manifest that the effect of the statute, if it were construed according to the appellant's argument, would be to do a great deal more harm to third parties than it could do to *anyone else*.”

And on appeal to the House of Lords, reported in 9 A.C. 453, Earl Cairns says, at p. 454:—

“It is said that the 23rd section of the Act produces this result, and I admit freely that the section seems to me capable of that construction. No doubt if we read it literally it does seem to provide that when any property of the bankrupt acquired by the Trustee under this Act consists of land of any tenure burdened with onerous covenants, the Trustee may by writing under his hand disclaim such property, and upon the execution of such disclaimer the property disclaimed shall, if the same is a lease, be deemed to have been surrendered.”

And again he continues:—

“It is possible that they may mean that, to all intents and purposes, as between all persons, persons actually concerned in the bankruptcy, and those not so concerned, it shall be a surrendered lease, and shall be altogether out of the case. But on the other hand is that the only interpretation?”

And further on:—

“Where there are two constructions, the one of which will do, as it seems to me, great and unnecessary injustice, and the other of which will avoid that injustice, and will keep within the purpose for which the Statute was passed it is the bounden duty of the court to adopt the second and not to adopt the first of those constructions.”

This case was cited with approval in *Railton v. Wood*, 15 A.C. 263, where, after quoting the above dictum of Earl Cairns, Lord Field says:—

“Of the two possible constructions, therefore, their Lordships prefer that which does not extend the operation of the Statute to collateral effects and consequences beyond its general objects and policy.”

Kingston v. Cataraqui Electric Ry. Co., 25 A.R., at p. 468.

Plumstead Board of Works v. Spackman, 12 Q.B.D., p. 878—Brett, L.J., at p. 887.

Queen v. Clarence, 2 Q.B.D. 65.

What remedy would be applicable? This Board is not a court of equity, nor a judicial body; it can only act and adjudicate within its jurisdiction. It is not concerned with adjusting the rights of parties arising *ex contractu*, but it is concerned with the due and unfettered execution of its functions under the Railway Act; and if the obligations of a contract, even though solemnized as alleged interfere, I think it should, and must, assert a remedy, as it did in *Crowsnest Coal Co. v. Canadian Pacific Ry. Co.*, 8 Can. Ry. Cas., p. 33, and in *Lyons Fuel & Supply Co.*, Judgment of the Board, 1919, p. 1.

If such an adjustment is not made, the losses to the Canadian National Railway System through these inadequate rates must be made up elsewhere, or fall as a further tax upon the public to make up the deficit that may be involved, so that as that system is owned by the people of Canada, the anomaly would be accentuated by the Government being called upon to exact from the public the difference between the compelled competitive rate forced upon its railway system, as a result of a contract made with another railway company, and the fair and adequate rate awarded by this Board.

It would surely be a fair adjustment, in the circumstances, for this Board to make such a disposition as would ensure not only to this railway, but to all others entitled to them, fair and reasonable rates, and leave remedies for settlement *ex contractu*.

Western Counties Ry. Co. v. Windsor & Annapolis Ry. Co., 7 A.C., p. 178, at pp. 190 and 191.

I do not think that the agreement, with its preceding statute, has the force of a statute. If the statute directly confirmed it and declared it binding, it would, I think, remain a contract, for the reasons I have stated and supported by the authorities I have cited.

The cases of *Ottawa Electric Co. v. Township of Nepean*, 60 S.C.R. 216; and *Robertson v. G.T.R.*, 6 Can. Ry. Cas. 494, 7 Can. Ry. Cas. 267, are, I think, clearly distinguishable.

For the relief of third parties from the hardship of a contract to which it is not a party, and to arrive at an adjustment of the present conditions and restore order out of chaos, I think that this Board can but do its duty as administrator of the Railway Act, and if, in so doing, rights are not nicely adjusted, there is a remedy elsewhere. This Board is concerned with the contract, and the rates under it only, as it and they disturb and block the efforts of the Board to adjust and maintain the poise and equal relation of rates under the Railway Act. In the circumstances with which we are confronted, I think the Board's duty is to assert its full jurisdiction and powers to do so, and in its discretion, and while scrutinizing the contract rates as to their relative fairness and adequacy, to maintain its decision as to what rates tend to equality, fairness, and reasonableness, and disallow rates it finds are not so.

Montreal Park and Island Ry. Co. v. City of Montreal, 43 S.C.R., p. 256.

Canadian Pacific Ry. Co. et al v. Regina Board of Trade, 45 S.C.R., p. 321.

The disparities and inequalities resulting from the application and maintenance of Crowsnest rates are set forth, by example, in (a) Exhibit five,

showing "example of freight rate disparities which would result from the restoration of the Crowsnest Pass Act," and (b) Exhibit five A, "Memorandum submitted by the Canadian National and Canadian Pacific Railway Companies," which may be referred to.

If the Board's powers to remedy situations so disclosed were to be blocked and impeded by rates originating by contract before the Act of 1903, the whole scheme of the Railway Act of 1903 would fail, and the rate structure, the work of the Board for twenty years, would fall to pieces.

Some difficulty is presented by the Act of 1922, chapter 5. If the Act of 1897 is not a Special Act limiting the Board's rate controlling functions, the effect of this amendment upon the two commodities named, viz., grain and flour, is obscure. It is contended that this legislation must be indicative of an intention of Parliament to fasten upon the Board the duty of fixing rates on these two commodities in accordance with the Crowsnest Agreement, and from the words used that would appear to be so, but if the Crowsnest Agreement did not take the form of a Special Act limiting the Board's plenary powers, there is nothing in the Act of 1922 to make it do so.

The Act of 1922 refers not to the Crowsnest Pass Act, but the agreement made pursuant to that Act, so that Parliament, therefore, did not, as late as 1922, regard the 1897 legislation as a Special Act. This is important to observe in determining just what the Act purports to do. By the Act of 1903 this Board was constituted by Parliament as a court of record and well nigh exclusive jurisdiction conferred upon it, as that jurisdiction is affirmed and emphasized in the Act of 1919, section 325, subsection 5, in plain terms. The Board exercised that jurisdiction and established rates under it, and changed these rates from time to time as conditions necessitated.

The general Act admits of no exception to its general terms as regards the full authority of the Board, *inter alia*, "to fix, determine, and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require." By the Act of 1922 these general powers purport to be qualified and limited in a manner which would effect discriminations and preferences in favour of two out of a list of several commodities, the subject of a special agreement which had not the force of a statute and which was not otherwise binding upon the Board.

The Act of 1922, therefore, comes into conflict with the general Act of 1903. The Act of 1922 specially confers a preference by an agreement—made twenty-seven years ago—with one railway company, under conditions of traffic which have materially changed, and to the prejudice and loss of other railways not parties to, or bound by, the 1897 agreement, and thereby causing those inequalities, preferences, unfair and unreasonable and unjust discriminatory rates which the whole tenor, spirit, meaning, and policy of the general Act of 1903, and subsequent general Railway Acts, is aimed at removing, and charges this Board with the duty of removing.

If this Act of 1922 is to govern, the Board cannot exercise its functions, and the mischief aimed at by the general Acts cannot be removed with the disturbance of the whole rates structure, built by the Board under the general law as a result.

In the face of this apparent inconsistency and repugnancy, the Board's course is, I think, clearly to follow and exercise its general jurisdiction under the general Act, and disregard the special legislation inconsistent therewith.

Special interests will not be served at the expense of the sacrifice of the general principles entrusted by the general Act to the Board to conserve and administer in the interests of the public generally, and of railways generally. That course would be at least consistent with the Board's efforts to discharge the duties incumbent upon it to administer the general Act according to its plain

spirit and meaning. If the Board is wrong in this view, it can be corrected; but, in the exercise of its remedial functions, and in the face of such a crisis which is now presented to it, this course would appear to be the more consistent and more conducive to the adjustment, on a basis of equalization, of the present upheaval of rates.

The adherence of the Board to its general jurisdiction in the face of this inconsistency and repugnancy would seem to be in accord with the proper and usual construction based upon such inconsistencies, especially in remedial statutes.

In *Colquhoun v. Brooks*, 14 A.C. 493, Lord Herschell says, at p. 506:—

“It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute to consider any other parts of the Act which throw light upon the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act.”

See *Board v. Board*, 41, D.L.R. 286, at p. 293:—

“The law will never make an interpretation to advance a private and to destroy the public (right), but always to advance the public and to prevent every private, which is odious in law in such cases.” 6 Coke, p. 139, Part XI, 73 b.

See, also, *Atcheson v. Everett* (1776), Cowp. 382, at p. 391, Lord Mansfield, C. J.:—

“The General Act being a remedial statute, in advancement of the remedy, should be done in a way consistent with any construction of it.”

Johnes v. Johnes (1814), 3 Dow. App. Cas. 1, at p. 15, Lord Eldon, L.C.

Dean and Chapter of York v. Middleburg (1828), 2 Y. and J., at p. 215, Alexander, C. B.

Nicholson v. Fields (1862), 31, L.J., Ex. 233, at p. 235, Pollock, C. B.

Giovanni Dapuetto v. James Wyllie & Co. (1874), L. R., 5 P.C. 482, at p. 492; 43 L.J., Ad. 20, at pp. 23, 24, Sir Montague E. Smith, delivering the judgment of the Judicial Committee.

The Queen v. Skeen (1859), 28 L.J.M.C. 91, at p. 94, Lord Campbell, C. J.:—

“If the apparent logical construction of its language leads to results which it is impossible to believe that those who framed or those who passed the statute contemplated, and from which one's own judgment recoils, there is, in my opinion, good reason for believing that the construction which leads to such results cannot be the true construction of the statute.”

The Queen v. Clarence (1888), 22 Q.B.D. 23, at p. 65; 58 L.J.M.C. 10, at p. 32, Lord Coleridge, C. J.:—

“You are not so to construe the Act of Parliament (Merchant Shipping Act, 1873, 36 and 37 Victoria, chapter 85) as to reduce it to rank absurdity. You are not to attribute to general language used by the legislature in this case, any more than any other case, a meaning that would not only carry out its object, but produce consequences which to the ordinary intelligence are absurd. You must give it such a meaning as will carry out its objects.”

The Duke of Buccleuch (1889), 15 P.D. 86, at p. 96, Lindley, L. J.

Beal on Statute Interpretation, pp. 152, 153, and 197-198.

Hill v. East and West India Dock Co., L.R., 9 A.C., at p. 456.

Plumstead Board of Works v. Spackman (1884), 13 Q.B.D. 878, at p. 887.

I would find as facts upon the evidence:—

1. That the Canadian Pacific Railway rates, as contracted for by the agreement of 1897, while then fair and reasonable under then traffic conditions, are not adequate to present conditions of traffic, and do not furnish an adequate return for the service concerned, and are not fair and reasonable, representing as they do but 35 per cent to 60 per cent of rates found adequate under present traffic conditions. (See Exhibits 73, 74, 75, and 76.)

2. That the continuance of any of the contract rates compels unjust and unfair reductions by other railways, not parties to the contract, in competitive territory, and causes unjustifiable loss to those companies, which they ought not to be called upon to bear.

3. That the rates in force July 6, 1924 (except the rates made effective by the Act of 1922), were just and reasonable rates as to all companies, were equitable, uniform, and undiscriminatory in their effect, and had been permitted by the Board after full and exhaustive examination.

4. That rates represented by tariffs in question, effective July 7, 1924, are unequal, unjust, unfair, not uniform, and subversive of stable rate structure, and cause widespread and far-reaching dislocation and disruption of such rate structure, and are not based upon any sound principle applicable to present traffic conditions.

5. That the Canadian National Railways are entitled to the just and reasonable rates found and permitted under the judgments and orders of this Board referred to, but are unable to obtain them by reason of being held down in competitive territory on the commodities mentioned by the terms in the agreement of 1897 relating to such rates, and suffer loss in consequence.

And I am of opinion—

(a) That the Crowsnest Pass Subsidy Act was not, and is not, a "Special Act" within the meaning and intent of the Railway Acts of 1888 or 1903, or afterwards, and the jurisdiction and powers of the Board upon it conferred by its constitution (the Act of 1903) and continued in subsequent Acts, are not limited, restricted, qualified, or affected by anything contained in that Subsidy Act or in the agreement of September 6, 1897.

(b) That if such Act were a "Special Act," it does not relate to the same subject-matter as the general Act of 1903, and is excluded from operation upon the general Act, with like results.

(c) That the provisions of the agreement executed in pursuance of the Act, in so far as the same relate to, or purport to fix, regulate, and control railway rates, ought, under no circumstances or conditions, to be permitted to clash or interfere with, limit, or restrict the right of other railway companies, not parties to it, operating in competitive territory, to the fair and reasonable tolls and rates from time to time determined and permitted upon the commodities and in the territory to which the agreement rates apply, and of which tariff rates so approved such companies have been denied, and, but for which agreement rates, they would have received, and now ought to receive; and

(d) That this Board has jurisdiction, under the Railway Act, over the tolls and tariffs of all railway companies within its jurisdiction, and, in the exercise of that jurisdiction and of its remedial functions, and for the purpose of adjusting the present disparities and dislocation of rates, may, and should, make such adjustments with respect thereto as will restore equalization and stabilization of railway rates throughout Canada, and in doing so, and while paying due regard to the effect of all such agreements as that now in question, as traffic circumstances, is in no way conclusively bound by them.

(e) That all decisions, judgments, or orders of the Board in any way inconsistent with this opinion be varied and amended so as to conform to it.

I think that the basic remedy to be immediately applied to the present conditions, caused by the filing of the tariffs in question, is to cancel them and restore the rates under tariffs in force on July 6, 1924, permitted by the Board. If any inequalities, discriminations that are unjust, or preferences that are undue remain after restoration of such tariffs, application may be made to the Board for their adjustment.

The four tariffs in question, and cited herein, should be disallowed and withdrawn from operation within fifteen days, and the tariffs in force on the sixth day of July last should, within that time, be restored and made effective.

Order should go accordingly.

OTTAWA, October 14, 1924.

THE CHIEF COMMISSIONER:

This matter was set down for hearing following receipt of complaints from the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, and Prince Edward Island, as well as from cities in different parts of Canada as far separated as Vancouver, B.C., and St. John, N.B. Such complaints were augmented in volume by specific instances of discrimination laid before the Board by Chambers of Commerce and Boards of Trade of over a score of cities, by numerous business associations including the Kelowna Growers' Exchange, the United Farmers of British Columbia and of Manitoba, the Canadian Manufacturers' Association, the National Dairy Council and many other organizations as well as by individual companies from the east and west, all of which united to complain that the Crowsnest Pass Agreement and the rates established thereunder have resulted in discrimination against individual firms, against localities and against manufactured and natural products, culminating in an unsettled business condition throughout Canada which some of those appearing before the Board have pronounced to be chaotic, and others have described as absolutely destructive of trade. Some of the localities represented were described as being intensely indignant because of such discrimination, and determined at all hazards that such conditions should be put an end to. Some complainants have founded their grievances upon the recent re-establishment of the rates called for by the agreement, others are protesting against any attempt to remove the preferences so created.

There are complaints from cities and towns which have come into existence since the Crowsnest Pass Agreement was made, and to which, by a narrow construction of the document, the rates provided for in the agreement are held not to apply. Other complaints have arisen by reason of certain railway lines constructed since such agreement, and by the same narrow construction freight carried along these lines is excluded from the benefit of the reduction provided for, and consequently the localities served by such later extensions are not favoured by the rates set out in the agreement, thus causing discrimination against them. Further complaints are concerned with a disparity in freight rates on fruit moving east as compared with that moving west, others with a disproportion in grain rates charged in western Canada in comparison with the eastern rate, with arbitrary classification of freight, with increased carload weights, and with many other circumstances specifically enumerated in the various resolutions, petitions and representations placed before the Board. There are also complaints concerning which it may be said the Crowsnest Pass matter has little to do, but with very few exceptions the whole trouble centres around that agreement.

The diversity of views held and expressed before the Board by interested parties has demonstrated beyond doubt that under present conditions there is no common ground which all can occupy in harmony. The existence and con-

tinuance of the agreement, and of the preferences thereunder given make it impossible to reconcile such sharply conflicting interests, or to present any solution of the problem which is not fraught with what is regarded as an unjust discrimination and unfairness to one body of complainants or to the other.

The immediate and pressing necessity of a speedy determination of the unsettled problems connected with this inquiry, has moved the Board to hasten its decision, as far as regards the principle which it thinks should apply to the solution of the difficulties involved. It is apparent that if the reductions called for by the Crowsnest Pass Agreement must be forever maintained, full effect must be given to them, and consideration must be had of other problems, which in that event necessarily arises, but which otherwise do not exist. As for instance, the above noted complaints as to the status under the agreement, of towns and cities which have come into existence since the making of such agreement, and the liability on the part of the lines of railway since constructed to carry the commodities named at the reduced rates. These are two important features of the problem which will have to be faced, in case the proper construction of the agreement be that the Crowsnest Pass reduction must persist. If however it should be determined otherwise, the dual problem above indicated sinks out of sight and in this respect, as well as in many others, a decision as to the jurisdiction of this Board over the rates called for by the agreement referred to, lies at the very threshold of the problems which have been presented for, solution.

There are other and manifold subjects remaining for consideration after the settlement of the main question and as before indicated, these are not altogether disposed of by a decision concerning the Crowsnest Pass Agreement. In that regard mention may be made of the matter of grain rates westward, as between grain destined for export and that intended for domestic consumption. And in the east, the question of sugar rates from the refineries in New Brunswick and Nova Scotia remains for adjustment undetermined by the present decision of the Board upon the legal question embodied in the construction of the agreement. These two outstanding subjects of inquiry, and others of equal importance to different localities are not lost sight of by this decision and they will be disposed of by the Board in the light of its determination regarding the Crowsnest Pass Agreement, so far as the same are affected thereby. If parties or localities interested in such other matters consider that in the light of the present finding of the Board regarding the agreement, a proper decision of any such other question requires a rehearing therein, it is open to them to make application to that end. Otherwise, the Board will proceed with all possible despatch to take up these consecutive problems, and deal with them in the light of the evidence and argument already presented in each individual case. It is obvious that because of the very numerous complaints now before the Board, some little time must be consumed in giving full and complete consideration to the circumstances connected with each case, and it is because of the period of time which must necessarily elapse before all these separate matters can be finally determined, that in the opinion of the Board, it is not only desirable but it is imperative in the public interest that its view upon the main question should at once be made public, as a first step toward the adjustment of business relations upon conditions made stable by the decision of this Board. It is hardly necessary to allude to the fact that whatever rates are effective upon the railway line immediately concerned in the agreement, must be met at competitive points by other railways serving the same territory, whereby the scope and incidence of the agreement are materially extended, making it all the more necessary that in the interests of all, a speedy determination of the main issue be arrived at.

I have had the pleasure of reading over the judgment prepared and written by Mr. Commissioner Boyce dealing with the legal aspect of this case, and I unreservedly adopt the conclusion at which he has arrived concerning the

jurisdiction of the Board over the freight rates under the Crowsnest Pass Agreement. I can arrive at no other conclusion as to the Board's jurisdiction than that which has been expressed by him. It is doubtless true that those interested in the maintenance of the rates established under the Crowsnest Pass Agreement have been able to point to previous dicta—and perhaps to one decision of the Board—expressing a conclusion different from that which is announced to-day. With regard to all the cases referred to, except that known as the Increase in Rate case, 22 C.R.C. 49, such remarks were clearly obiter and being such, cannot by any principle of construction, be held to bind the Board.

Referring the case last mentioned which was decided over six years ago and which is said to be still under appeal to the Supreme Court of Canada, responsible counsel have urged that the question involved here was not then argued before the Board, that it was not necessary for a decision of that case, that a pronouncement upon the subject by the Board was unexpected, and following such announcement appeal was immediately taken, which appeal, while still alive, has not been proceeded with because the rates provided in the agreement were suspended by statute. Notwithstanding this explanation, if this were an ordinary case, one in which the rights of private parties only were concerned it would, I think, be obviously the correct practice to await with deference the determination of the question at the hands of the Appeal Court before announcing decision herein, especially when such pronouncement is at variance with the views previously expressed, even under the circumstances above alluded to. But in my opinion, the importance of this matter both to the business interests of the country and to the common carriers, is of such an overwhelming nature, and the necessity for stabilizing freight and business conditions is so imperative, that I think the duty owed by this Board to the public should over-ride the finer questions of legal etiquette which might be involved, if indeed any such questions can be said to exist.

The further view has been urged upon us that from time to time enactments have been made by the Dominion Parliament in which the Crowsnest Pass Agreement has been referred to and recognized—notably subsection 5 of section 325 of the Railway Act of 1919, and chapter 41 of the Acts of 1922, in which latter statute it is provided that “rates on grain and flour shall, on and from the sixth day of July, 1922, be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada, 1897.” That is to say, by the Crowsnest Pass Agreement. No doubt that is all true. The fact that the agreement was entered into is readily conceded: It was never denied. But the real issue before us is—Has this Board power to say to the Canadian Pacific Railway Company—Although in the year 1897 you bound yourself to the maintenance of certain freight rates, nevertheless, this Board as the rate making authority now releases you from such obligation.

I cannot view the agreement in the light of forever disabling the parties thereto from reconsidering their situation and from making the necessary adjustment that business conditions now so insistently demand. The contract is between Her Majesty the Queen on the one hand, and the Canadian Pacific Railway Company on the other. All that need be said of it for the purpose of this argument is that it consists of an agreement on the part of the Crown to pay a certain specified sum of money as a subsidy to the railway company in assisting it to build the Crowsnest Pass Railway, and in consideration of the receipt of that money, the Canadian Pacific Railway Company promised to build and operate the line and to allow certain reductions in freight rates to be charged upon specific commodities.

I am at a loss to discover upon what ground it can be said that such an agreement carries with it the necessary consequence that the parties who entered into it could never readjust their relations under the contract. The argument

in support of that contention involves the supposition that under the statute and the agreement, the public immediately affected by such reduction obtained a vested interest in the continuance of these reduced rates. No such provision is contained in the agreement itself, and I can see nothing to indicate that any such intention was present in the mind of either party to the contract when it was entered into. The Crown was acting in the public interest in this, as well as in all contracts, and I can find nothing in the agreement, or in anything which surrounds it, to lead to the conclusion that the parties thereto were not, and are not, free to amend, rescind, or alter the contract in any way they mutually agree upon.

It therefore follows that the reduction provided for in the Crowsnest Pass Agreement must disappear as a factor in Canadian freight tariffs. Under the conditions now prevailing it is impossible to make a fair and reasonable adjustment of rates and tolls as between one locality and another, and as between the shipper and the railroads on the basis of the continuance of such reductions and the provisions of the Crowsnest Pass Agreement. This decision will remove as between city and city all discrimination based upon the Crowsnest Pass Agreement, and will eliminate whatever discrimination has arisen from an extension of lines of railway to which the benefit of such rates has not been applied by those responsible for the existing tariffs.

Under legislation enacted subsequent to the passage of the Crowsnest Pass Railway Act and the making of the agreement under it, this Board has been vested with full power to fix, determine, and enforce rates then exercisable by the party of the first part to such agreement—subject to appeal, and I think this Board has the necessary jurisdiction and should proceed to consider the subject-matter of all these complaints with a view to removing existing discrimination and giving necessary relief, unhampered by the agreement entered into under the provisions of the Crowsnest Pass Railway Act, and the order made hereunder is, in my opinion, the first step in that direction.

OTTAWA, October 7, 1924.

Deputy Chief Commissioner Nantel and Commissioner Lawrence concurred.

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The various decisions in which the Board has dealt with the rate relations of the Crowsnest Pass Agreement are, in the reasons of the majority, subjected to critical analysis. I have attempted to give due weight to the consideration of the various criticisms and contentions advanced.

Notwithstanding careful consideration, I am constrained to the conclusion that these decisions were neither erroneously nor carelessly rendered so far as the consideration of the limiting effects of the Crowsnest Pass Agreement are concerned; and I am further constrained, although with great deference to the opinion of the Chief Commissioner, to conclude that the provisions of law involved do not warrant the conclusions arrived at by the majority.

It is urged that the decisions of the Board in which the Crowsnest Pass Agreement have been held to have imposed maximum rates which cannot be exceeded or disregarded are based not only on an erroneous conception of the force of the agreement in regard to rates, but also on an erroneous conception of the Board's jurisdiction in regard thereto.

It is contended that the decision of the late Chief Commissioner Killam in *The Coast Cities Case*, which broke the trail regarding the effect of the Crowsnest Pass Agreement, contained remarks regarding the effect of this agreement which were not material to the matter in dispute, and that these remarks, therefore, are to be regarded as *obiter dicta*.

The criticism of the decision in *In re Increase in Passenger and Freight Tolls*, 22 Can. Ry. Cas., 49, the details of which need not be gone into here, is that the finding as to the limiting effect of the Crowsnest Pass Agreement is not in reality involved in the ratio *decidendi*, it being contended that the matter was not in argument before the Board, and the Board, therefore, did not have the benefit of the information and light obtainable from the argument of counsel representing divergent interests.

In the first place, it seems to me there can be no question but that the matter was presented before the Board at the time of hearing by counsel for the province of Manitoba as a material factor. See in this connection in *In re Increased Passenger and Freight Tolls*, 22 Can. Ry. Cas., 49, at pp. 55-60. The then counsel for the Manitoba Government, who appeared in the present hearing as counsel for the Canadian Manufacturers' Association, specifically drew attention in the course of the present hearing to what he had said on the former occasion, as set out in the former record.

But even if weight is to be given to the contention urged by way of criticism, this does not appear to me as being final. I think regard must be given to the discretion possessed by the Board under the Railway Act, a discretion which, in my opinion, differentiates in some degree at least the Board from other courts in connection with the matter of decisions.

I appreciate the advantage of regular procedure along the beaten pathway of the law. In my opinion, whatever may be the view at times popularly expressed, it was not the intention of Parliament in providing for the Board of Railway Commissioners for Canada to create a jurisdiction similar to that of an Eastern Cadi, rendering justice, as he saw it at the moment, independent of record and of law. While the Act gives the Board discretion, it of necessity has to be a discretion based on reason and not on whim; and so, if in its procedure in connection with the hearing and consideration of evidence, it differs in some degree from other courts, there must be good reason for such difference.

The Board, within the limits of the Railway Act, is given a wide discretion in regard to the ways by means of which it may approach the findings set out in its decisions; and it appears to me that, on this account, the methods of construction and criticism which are open to consider in connection with the decisions of other courts are not necessarily applicable in the same degree in the case of decisions rendered by the Board. The Board may institute a proceeding of its own motion. It may render a decision without a hearing. It has been said in *In re Telegraph Tolls*, 20 Can. Ry. Cas., 1, at pp. 10 and 11:—

“The scope of the jurisdiction conferred upon the Board differs in various respects from that exercised in ordinary judicial procedure. In a proceeding before a court, there is normally a satisfactory assurance that when the hearing is concluded all the material evidence has been presented and judgment thereafter issues on such evidence. The Board while made a court of record by the Railway Act is given peculiar functions which by placing an especial reliance upon the discretion of the Board demands especial care that the discretion should be carefully used. The Board has dual, and to some extent anomalous functions of investigating matters of its own motion and of deciding matters, whether originated of its own motion or on complaint. Subject to exceptions, which might be pointed out as in the case of a continuing offence, it may be said that in general, a court is concerned with adjudication on a past and closed state of facts. In the case of a regulative tribunal exercising supervision over rates, the question confronting it is—reasoning from the past—what continuing rate or scale of rates should be prescribed for the future? The scope of the Board's activity is not punitive or prohibitory in respect of past transactions, but corrective and amendatory in respect

of future transactions. The Board deals with a future rate in the light of what has been established as to the past rate. But in so dealing it makes researches of its own, and supplementary to what has been presented in evidence and all this constitutes the record on which it makes a decision. Where the question of what is a reasonable rate for the future is before it, it has to consider not only what may be established on the basis of past transactions, but also to endeavour to form an opinion as to what will be a reasonable rate for the future under conditions which cannot be exactly measured in terms of what is set out in evidence and which must of necessity be estimated. The imposing of the burden of so wide a discretion as is thus placed upon the Board by the Railway Act of necessity creates an equally wide obligation to see that the discretion is wisely used."

When, then, the Board subjected to analysis and considered the matter of alleged limitation of rates exercised by the Crowsnest Pass Agreement, which was placed before the Board—even if only in an outline way—by counsel for the province of Manitoba, the Board was not acting beyond the scope of its powers. I am, therefore, unable to accept the conclusion that the Board in so finding was using words which were superfluous as not being material to the *ratio decidendi*.

Even if it is held that the decisions which have been rendered by the Board dealing with the Crowsnest Pass Agreement and its effects can be distinguished and held to be inoperative as limiting the Board's powers, reference must still be made to specific legislation enacted by Parliament. The legislation in question is contained in *subsection 5 of section 325 of the Railway Act and in 12-13 George V, chapter 41*.

As already pointed out, it was held in *In re Increased Passenger and Freight Tolls*, that the Crowsnest Pass rates in regard to the commodities concerned operated as maxima, which the Board could not exceed.

Following the position therein laid down, the Board held there was a difference as to the powers it could exercise in a case where an agreement or franchise was not validated by or incorporated in Dominion legislation as compared with the case where it was so incorporated or validated. In the application of the *Montreal and Southern Counties Ry. Co., 23 Can. Ry. Cas., 106*, the municipalities of the town of St. Lambert, Greenfield Park, and Longueuil pled that there were existing franchise arrangements as to rates under which the railway operated and which the Board could not exceed. The Board held that agreements between the municipalities and the railway did not oust the jurisdiction of the Dominion Parliament and the Railway Board in their administration of the Railway Act, and stated,—

"It may be noted that the agreements in question have not been validated by legislation and have not been submitted to or approved by the Board."

An appeal was made by the town of St. Lambert to the Governor in Council asking for the rescission of order of the Board No. 27456, which implemented the judgment already referred to. The prayer of the petitioner was not granted.

In the application of the *Hamilton Radial Electric Ry. Co.*, decision in which was rendered July 12, 1918, *23 Can. Ry. Cas., 114*, the Board found that under the Dominion legislation the municipal agreements and by-laws under which the railway operated were to remain in full force between the municipality and the railway as continued and incorporated by the Act. Following the decision in *In re Increase in Passenger and Freight Tolls, 22 Can. Ry. Cas., 49, at pp. 57-60*, it was held by the Chief Commissioner that the limitations created by the municipal franchise by-laws, incorporated in effect as they were into the railway's legislation, acted as a limitation to the exercise of the Board's power.

Subsequent to the decisions following the above principle as laid down in *In re Increase in Passenger and Freight Tolls*, came the amendment as set out in subsection 5 of section 325 of the Railway Act, 1919.

Counsel for the Canadian Railway Association took the position that subsection 5 was enacted at a time when the decision in *In re Increase in Passenger and Freight Tolls* was in litigation, and that the legislation was intended to clarify a situation which was uncertain from the standpoint of jurisdiction.

I have considered this suggestion, but do not find it conclusive. As the matter presents itself to me, it was recognized that after the termination of the period during which the War Measures Act would be operative, there might and probably would be a period during which high operating costs would continue, and which could not adequately be dealt with if statutory or assumed statutory maxima were still operative. It is a matter of knowledge that it was at first proposed that the legislation in question should run on for five years. This term, however, was not adopted. As I read the legislation, it was intended and hoped that the time limited would tide over a transition period.

The words of the subsection are very general and do not mention the Crowsnest Pass Agreement, nor, in fact, do they mention any other agreement. The judgments above referred to show that the limiting effects of rate agreements embodied in franchises validated by or incorporated in Dominion legislation were recognized; but the limited number of such cases cannot be taken as a real measure of the reason for the enacting of the legislation, notwithstanding the fact that the legislation during its life would enable those operating the railways in question to make application for relief, which the terms of their franchises would not otherwise permit.

I consider that the real reason for the enactment of the legislation was the Crowsnest Pass Agreement.

Turning now to the analysis of subsection 5 of section 325, if the Board had, *ab initio*, power to deal with reasonable rates unlimited "or in any manner affected by the provisions of any Act of the Parliament of Canada, whether general in application or special, and relating only to any specific railway or railways," and if the Board had, *ab initio*, power to deal with matters of discrimination or preference, regardless of allegations that such discrimination or preference was justified or required by "any agreement made or entered into by the company," what was the necessity of the legislation?

It may be said that if it is held that the Crowsnest Pass Agreement is not a Special Act, so far as rate limitation is concerned, then the provisions of the first portion of the subsection I have quoted are not material as bearing on the intention of Parliament in regard to the Crowsnest Agreement. I cannot, however, escape the opinion that the citation I have made showing the intention that during the time limited by the Act the Board should not be limited by the provisions of the general or Special Act was intended to refer to the Crowsnest Pass Agreement. I can hardly conceive a situation wherein the difficulties arising out of franchise agreements affecting some smaller electric railways would be made the reason for this amendment to the Railway Act. Whether Parliament was right or wrong in regard to considering that the Crowsnest Pass Agreement had the status of a Special Act, it is not for me to say; but I cannot escape the conclusion that it did regard it as having the status of a Special Act.

But, continuing further, if it is admitted that there was no Special Act involved, so far as the Crowsnest Pass Agreement is concerned, and, therefore, the portion of the legislation I have referred to was not material as in any way indicating or defining the power of the Board in respect to the situation, the situation is different when it comes to the discrimination provisions of the subsection. There, as has been pointed out, no "discrimination or preference can be justified or required by any agreement made or entered into." The Crowsnest Pass arrangement was an agreement. If the Board had power under the

discrimination sections to disregard the limiting powers of such an agreement, what was the necessity for such legislation? It seems to me that the enactment of this legislation is, in substance, a statement by Parliament that in regard to the subject-matter dealt with in the subsection the Board had not—in the absence of this specific enactment—regulative powers. If this construction is justifiable, then it is unnecessary to elaborate the position which exists at the end of the three-year period when the legislation is no longer operative.

In 1922, subsection 5 of section 325 was amended by chapter 41, 12-13 George V. I appreciate it is not open, under rules of legal construction, to refer to Hansard as explaining or construing this legislation. But there is, however, high authority to the effect that the Report of a Special Committee, on whose report legislation was introduced, may be looked to in construing the statute. In a decision of the House of Lords in *Eastman Photographic Company, Ltd., appellants, and the Comptroller-General of Patents, Designs and Trademarks, A.D. 1898, 571, the Earl of Halsbury, L. C., held at pp. 573 to 575*:—

"Before dealing with the decision itself, I think it desirable, from what occurred in the course of the argument, to say something as to what sources of construction we are entitled to appeal to in order to construe a statute. Among the things which has passed into canons of construction recorded in *Haydon's Case* (2), we are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed, and the reason for the remedy.

"My Lords, I think no more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission."

The final report of the Special Committee of 1922, appointed to consider railway transportation costs, recites that it was "charged with the duty of inquiring into the question of transportation costs with particular regard to the effect of the rates established by the Crowsnest Pass Agreement on Canadian National and other railways, and upon agricultural development and Canadian industries generally." Later the report says:—

"Whether the Crowsnest Pass Agreement should come into effect on July 6 next, or whether it should be further suspended to enable the Board of Railway Commissioners to regulate freight rates for a fixed period, regardless of rate-controlling agreements, upon a consideration of all the abnormal economic conditions still prevailing and upon other considerations, was the important matter referred to your committee."

Then followed the recommendations which are incorporated in the amending legislation of 1922.

In analysing the provisions of chapter 41, the reasons for judgment of the majority take the position that while the wording of the legislation is somewhat obscure, it cannot have been intended to oust the general jurisdiction of the Board in regard to rates.

The Act provides, in general, that subsection 5 of section 325 of the Railway Act of 1919 is to remain in force until July 6, 1923, subject to its being continued in force for a further period of one year by Order in Council, but subject to the proviso that "notwithstanding anything herein or in said subsection 5 contained, rates on grain and flour shall on and from the sixth day of July, 1922, be governed by the provisions of the agreement made pursuant to chapter 5 of the Statutes of Canada, 1897."

The legislation which was permitted to be continued until 1923, subject to the continuance of a further period of one year by Order in Council, is concerned

with the so-called Crowsnest commodities moving westwards. A different treatment in point of time, at least, is given to flour and grain; and it would appear on analysis that the difference is more fundamental than one of time alone.

The Act of 1922 was passed subsequent to the enactment of the general Act which it amends, and with the full knowledge of what is contained therein in regard to the Board's powers.

The legislation of 1922, in substance, states that grain and flour, falling within the scope of the agreement, shall, as to rates be governed by the provisions of the agreement. I submit that the Act of 1922, might, instead of referring to the provisions of the agreement, have set out in the legislation itself the rate provisions as to grain and flour set out in the agreement. If this had been done, the situation would have been that the Act passed subsequent to the General Railway Act and amending the latter was passed with the full knowledge of the Board's general powers in regard to rates, and notwithstanding this it specified maximum rates. Had this been done, I cannot see how there could be any question whether or not Parliament had intended to limit the Board's powers in regard to rates on the commodities in question, and within the conditions laid down under the agreement.

Instead of such a specific designation, the legislation refers to the agreement saying that "rates on grain and flour" shall be "governed" by the provisions of the agreement; that is to say, an Act is placed on the statute book and in order to ascertain what its binding effect is, reference must be made to an earlier agreement. Putting it in another way, this provision of the legislation of 1922 must be read with the indicated portion of the agreement.

The word "governed" would not appear to be a word of precision. I cannot find in the law dictionaries anything helpful by way of definition. Turning to the ordinary dictionaries, the Oxford Dictionary gives some eleven definitions. In general, the significance common to all of these definitions is that of *direction* or *control*. The one most material is that which reads as follows:—

"To constitute a law or rule for; to be applicable to as a determining principle or limiting condition; to serve as a precedent, rule or type for; especially in *law*, to serve in determining or deciding (a case)."

The Century Dictionary defines the word "govern," when used transitively, as "to exercise a directing or restraining power over; control or guide."

When used intransitively, "to exercise or have control over; practice direction or guidance."

Funk & Wagnall's Dictionary defines the word as "to serve as a rule or deciding precedent for".

The significance common to all these definitions is that of *control* or *limitation*; and I am of the opinion that the construction of the legislation of 1922 must be approached from this standpoint. The rates, then, to be charged on grain and flour as dealt with under the agreement on and after July 6, 1922, are to be *controlled* or *limited* by the rate provisions of the agreement.

The legislation of 1922, as I read it, provides for controlling or maximum rates on grain and flour within the limits and conditions of the agreement, and for these rates one is referred to the agreement. Whether, then, the agreement does or does not limit the Board's jurisdiction in this regard does not appear to be material so far as grain and flour rates are concerned. The legislation of 1922 in effect specifies the rates by earmarking the rates referred to in the agreement. The fact that instead of setting out the rates in the legislation there is a reference to the rates in the agreement does not, in my opinion, make any difference. The rates which the legislation specifies are rates carried in the agreement, and being tied up to the legislation are just as effective as if

set out in the legislation itself; and these rates, therefore, depend for their binding force on the legislation of 1922 and not on the provisions of the agreement.

An analysis of chapter 41 shows, then, a difference in treatment between grain and flour on the one hand, and the remaining Crowsnest Pass commodities on the other. The legislation provides specifically what rates shall apply on grain and flour, within the conditions laid down by the agreement. In the case of the Crowsnest Pass commodities, rates were allowed to go into operation by efflux of time, without in any way indicating by specific legislative sanction what rates should prevail for the future.

Even if, then, it is held that the general powers of the Board in regard to rate regulations transcend the limitations which the Crowsnest Pass Agreement has, under decisions given, been assumed to exercise, it is at the same time apparent that the grain and flour rates in respect of what is set out in the Crowsnest Pass Agreement stand in a situation apart. October 14, 1924.

COMMISSIONER OLIVER:

On July 7 of this year tariffs were filed by the Canadian Pacific and the Canadian National Railways which lowered the west bound rates, on certain commodities as specified in the Crowsnest Act, from some points in Eastern Canada to some points in Western Canada, while the rates from and to other points remained at their former level.

Shippers complained that by the tariffs of July 7 rates had been reduced in some cases and left at the former level in others, without any reason in traffic conditions for the discrimination, which they claimed was therefore "unjust", within the meaning of the sections of the Railway Act defining discrimination and empowering and authorizing the Board to prevent it.

Distributors complained that by the same tariffs of July 7 reductions to certain distributing centers had been made, while there was no reduction to certain other and competing points. This was claimed to be "discrimination" within the meaning of the Railway Act, such as called for action by the Board for its removal.

It was agreed by shippers and distributors that great injury had been and was still being done to the business interests of the country at large by the discriminations created by the tariffs of July 7. This was not contradicted or argued against by the railways.

The railways complained that the provisions of the Crowsnest Act of 1897 had compelled them to file the reduced tariffs of July 7; but they claimed that the Act did not compel them to file such reduced tariffs from or to points on Canadian Pacific Railway lines or connections not in existence in 1897.

The railways also argued that the Board had power to set aside the rates as fixed by the Crowsnest Act, even on lines and between points to which it was admitted the Act did apply, and asked that the Board permit them to revert to the rates generally in force before July 7, 1924, without regard to the Crowsnest Act.

As it appears to me from the facts and arguments presented, four principal questions have come before the Board for its consideration:—

(1) Does the Crowsnest Act apply to all lines and connections of the Canadian Pacific Railway, now in existence in Canada?

(2) Should the rates, as fixed by that Act, be extended by the Board to all railways in Canada?

(3) Do the powers entrusted by Parliament to the Board warrant the presumption that these powers enable it to over-ride the provisions of the Crowsnest Act, by increasing the westbound rates on certain specified commodities and eastbound rates on grain and flour, to a level above those fixed by the Crowsnest Act?

(4) Do existing circumstances make it desirable in the public interest that the rates on the specific commodities mentioned should be increased above the maximum fixed in the Crowsnest Act?

Regarding the first question:—

Although the discrimination in westbound traffic rates, which was the consequence of the tariffs of July 7, was declared by the shippers and admitted by the railways to have created “chaotic”, “impossible” and “ruinous” conditions for a large proportion of the manufacturers and traders of Canada, I have been unable to find in the presentation of their case by Counsel for the railways, any endeavour to establish by argument the assumption upon which the admittedly discriminatory character of the tariffs of July 7 was based. Where the consequences of a new and unusual interpretation of an old and well understood Act of Parliament are so serious as in this case, it would seem to me that the burden of proof in support of this new interpretation is upon the railways. As they failed to support their view by argument, although their attention was specifically called to the point, I am compelled to assume that their assertions lacked a satisfactory basis of proof, and are entitled to be considered accordingly.

I have been unable to find anything in the wording of the Act that would warrant the restricted interpretation placed upon it by Counsel for the railways. On the other hand, I find what appear to me to be good and sufficient reasons for holding that the interpretation hitherto given the terms of the Act is correct, as well as being in accordance with the well understood intent of Parliament when it was passed.

Subsection (c) of section (1) of the Crowsnest Act reads as follows;—

“That so soon as the said railway is opened for traffic to Kootenay Lake, the local rates and tolls on the railway and on any other railway used in connection therewith, and now or hereafter owned or leased by or operated on account of the company, south of the company’s main line in British Columbia;

“As well as the rates and tolls between any point on any such line or lines of railway, and any point on the main line of the company throughout Canada, or any other railway owned or leased by or operated on account of the company, including its lines of steamers in British Columbia, shall be first approved by the Governor in Council, or by a Railway Commission, if and when such Commission is established by law, and shall at all times thereafter, and from time to time, be subject to revision and control in the manner aforesaid.”

This subsection relates to the provisions of the Canadian Pacific Railway Company’s charter, which permitted the company to earn 10 per cent on its capital actually expended in construction, before its rates could be reduced by Parliament. By the terms of subsection (c), all rates between points on all lines of the Canadian Pacific Railway and points on the section of the railway whose proposed construction was the subject of the agreement, may be reduced by order of the Governor in Council (or of the Railway Commission), without any limitation, either expressed or implied.

In his explanation to Parliament of the purposes and provisions of the Crowsnest Act, the Honourable Mr. Blair then Minister of Railways, said:—

“We have succeeded in securing from the Canadian Pacific Railway Company a rescinding of that agreement (the 10 per cent clause), to such an extent that all traffic which may originate in any part of Canada for

the western country, and all traffic which may originate in that country for any part of Canada, or any portion of the main line of the Canadian Pacific Railway, shall be subject to such rates as either the Railway Committee of the Privy Council, or the Governor in Council, or a Railway Commission, should one be constituted, shall impose."

It will be noted that when the Honourable Mr. Blair used the words, "All traffic which may originate," as above quoted, he specifically included future, as well as present traffic, and did not except any part of the system on which the traffic specified "may" originate. Clearly, he desired Parliament to understand that that provision of the Act, so far as it went, applied to the whole Canadian Pacific Railway system, both as it then was and as it might be in the future.

Subsection (c) deals with two divisions of the same subject in a single sentence. The subject is the unrestricted control by Government of the rates on certain specified traffic movements on the Canadian Pacific system. The first part relates to rates on the Crowsnest line itself, with its British Columbia connections; the second part relates to rates on the system as a whole, to and from points on the Crowsnest line.

In regard to the movements specified there is no limit as to the period during which the rates shall be under Government control, nor are there any words that can be construed to limit the operation of Government rate control as to those movements over the whole system, so long as the restrictive power over rates is effective; which it is at all times.

The words "now or hereafter" in the first part of the sentence, are used to express the intent that the Columbia and Western extension of the Crowsnest line to Midway, then to be built under a British Columbia charter and receiving assistance from the Government of that province under conditions fixed by it, would be brought under the same absolute Government control as to rates as the rest of the system not subject to conditions imposed by British Columbia.

The expressions used in the second part of the sentence comprised in subsection (c) are intended to, and in fact do, apply to the whole railway system operated by the Canadian Pacific Company. The traffic movements affected are expressly limited; the period of the Government control of rates is expressly unlimited; the reference is in express terms to the system as a whole; therefore, if it were intended that the operation of the clause was to be limited at some future time to only a part of the system, that intent, to be effective, must have been expressly stated, as it has not been.

Subsection (d) reads as follows:—

"(d) That a reduction shall be made in the general rates and tolls of the company, as now charged or as contained in its present freight tariff, whichever rates are now the lowest, for carloads or otherwise upon the classes of merchandise hereinafter mentioned, westbound, from and including Fort William, and all points east of Fort William, on the company's railway to all points west of Fort William on the company's main line, or on any line of railway throughout Canada, owned or leased by or operated on account of the company, whether the shipment is by all rail line, or by lake and rail, such reduction to be to the extent of the following percentages respectively, namely,—

	Per cent.
" Upon all green and fresh fruits.....	33½
Coal oil	20
Cordage and binder twine.....	10
Agricultural implements of all kinds, set up or in parts	10

Per cent.

Iron, including bar, band, Canada plates, galvanized, sheet, pipe, pipe fittings, nails, spikes and horseshoes	10
All kinds of wire	10
Window glass	10
Paper for building and roofing purposes.....	10
Roofing felt, box and packing.....	10
Paints of all kinds and oils.....	10
Live stock	10
Wooden ware	10
Household furniture	10

"And that no higher rates than such reduced rates or tolls shall be hereafter charged by the company upon any such merchandise carried by the company between the points aforesaid; such reductions to take effect on or before the first of January, one thousand eight hundred and ninety-eight."

The specific reductions in rates made by subsection (d) are stated in terms which, as in subsection (c), can only be construed to apply to the whole railway system operated by the Canadian Pacific Railway Company. The words, "No higher rates than such reduced rates or tolls shall be hereafter charged" places beyond question that the period during which the maximum rates specified shall be effective is without limitation.

As in the case of subsection (c), the application of the maximum rates of subsection (d) is expressly limited; the period for which the rates are fixed is expressly unlimited; and in express terms, the reference is to the railway system as a whole; therefore, I again conclude that if it were intended that the operation of the clause was to be limited at some future time to only a part of the system, that intent, to be effective, must have been expressly stated, as it has not been.

Subsection (e) reads as follows:—

"(e) That there shall be a reduction in the company's present rates and tolls on grain and flour, from all points on its main line branches or connections west of Fort William to Fort William and Port Arthur and all points east, of three cents per hundred pounds, to take effect in the following manner:—

"One and one-half cent per one hundred pounds on or before the first day of September, 1898, and an additional one and one-half cent per one hundred pounds on or before the first day of September, 1899; and that no higher rates than such reduced rates or tolls shall be charged after the dates mentioned, on such merchandise from the points aforesaid."

Subsection (e) is a part of the same section as subsections (c) and (d), and, lacking express statement to the contrary, can only be construed as applying to the Canadian Pacific system as a whole, during the whole period of its application, as do subsections (c) and (d).

I therefore conclude that the position taken by the Canadian Pacific Railway Company, that the Crowsnest rates apply only to lines which, at the date of the passing of the Act formed part of that system, is not supported by the terms of the Act, which terms are identical with the agreement made under it.

The question as to whether the Crowsnest rates apply only on those parts of the Canadian Pacific Railway system which were in existence in 1897, is of greatest importance in its relation to the rates on grain from the prairies. By an amendment to the Railway Act of 1919, the provisions of the Crowsnest

Act fixing certain maximum rates were suspended by Parliament, and for a period which ended on July 6, 1922, the Board was given full authority to increase rates above the Crowsnest maximum. By another amendment to the Railway Act made by Parliament in 1922, the Crowsnest rates on grain and flour were made applicable from July 7 of that year, and without limitation as to time, subject to "The provisions of the agreement made pursuant to chapter five of the statutes of Canada, 1897," otherwise the Crowsnest Act. This Act was assented to on June 28 and on July 7. The rates on grain and flour from all prairie railway points to Fort William were (ostensibly, but not always in actual fact), adjusted downward in tariffs then issued by the railways to the level fixed by the Crowsnest Act. At that time the contention for a limited application of the Act had not been put forward by the railway companies, and probably had not even been considered. If the contention by the railways that the Crowsnest Act has only a sectional application so far as westbound commodities are concerned, is seriously put forward and is supported by the decision of a majority of this Board, the application of the Act of 1922 regarding grain rates must be accepted as being subject to the same limitation. The railways will then have the same liberty to create such discrimination between prairie points of grain shipment as they have already created in regard to commodity shipments westward by their tariffs of July 7, and the discriminations that now exist, notwithstanding the Act of 1922, will in effect be approved.

There can be no question as to the intent of Parliament in passing the Act of 1922, namely that all grain shipping points west of Fort William should have equality of treatment in the matter of rates. Had any other contention been made at that time, there is no doubt that it would have been met in the terms of the Act. If the contention as to the limitation of the application of the Act is accepted by the Board, the railways will be in a position to impose additional rate burdens on the grain traffic from west to east, with even more serious consequences to the country at large than have resulted from the tariffs of July 7, on commodity traffic from east to west.

As to the second question:—

The extension of the Crowsnest rates to railways other than those lines included in the Canadian Pacific Railway system, is not provided for in the Crowsnest Act. It is a matter of the general railway policy of the country. The power to compel conformity with the Crowsnest rates by other railways is entrusted to this Board under the terms of the Railway Act, and more particularly by its provisions regarding discrimination, as to rates, services, facilities, etc. The Crowsnest Act was passed in 1897, and the provisions in the Railway Act for the appointment of this Board in 1903; so that the powers of the Board were conferred with the full knowledge and understanding by the Government of the day and by Parliament, of the provisions of the Crowsnest Act. Parliament, by the Crowsnest Act, had fixed certain maximum rates, applicable only to the Canadian Pacific system. In 1897, when the Crowsnest Act was passed, the Canadian Pacific Railway operated 95 per cent of the railway mileage in Canada west of Fort William. By 1903, when the Railway Act amendment appointing this Board was passed, the Canadian Northern system had come into being, and the Government of the day was entering upon the construction of the Grand Trunk Pacific. The very wide and drastic powers to prevent discrimination, granted this Board on its establishment in 1903, were for the express purpose of ensuring to the Canadian people that the railways then under construction or in prospect would be compelled, in consideration of the aid they were seeking, to give like service at the same rates as the railway then in existence was giving.

The Railway Act of 1903, in its provisions regarding discrimination, merely established by statute the principle that had been accepted and consistently acted upon from the date upon which the Crowsnest rates came into

effect, namely, that the rates on the Canadian Pacific Railway, as fixed by the Crowsnest Act, were the standard which must fix the rates charged by other railways for like services. This is evidenced by the fact that tariffs from Grand Trunk points in Ontario to points west of Fort William were filed at the same time as the first Crowsnest tariff was filed by the Canadian Pacific Railway, and specified the same rates. All railway tariffs filed since that time, up to July 7, have been in acceptance of the same principle of the conformity of the tariffs of all railways subject to the jurisdiction of the Board.

The Crowsnest Act was intended to permit traffic between Eastern and Western Canada generally to be carried on under more favourable conditions as to rates than it had previously been, so far as the Canadian Pacific Railway was concerned; and the provisions against discrimination in the Railway Act were intended and framed to have the same result, so far as railways not parties to that agreement were concerned. Both Acts were necessary to secure the purpose desired. They are complementary, not contradictory. The relationship between the Crowsnest Act and the Railway Act of 1903 is plainly set out in subsection (b) of section (3) of the latter Act:—

“(b) Where the provisions of this Act and of any special Act passed by the Parliament of Canada relate to the same subject-matter the provisions of the special Act shall, in so far as is necessary to give effect to such special Act, be taken to over-ride the provisions of this Act.”

The Crowsnest Act is a special Act. In its subject-matter it deals with railway rates, as also does the Railway Act. The subsection above quoted effectually declares that in such case, the provisions of the Crowsnest Act, establishing maximum rates on the Canadian Pacific Railway, shall over-ride the provisions of the Railway Act, which give this Board otherwise unlimited authority to adjust rates. The Crowsnest rates having been established by Parliament as a maximum, in my opinion this Board is required by the provisions of the Railway Act against discrimination, to bring the rates of other railways (and the rates of the Canadian Pacific Railway not reduced by the tariffs of July 7), to that level.

Regarding the third question:—

As it seemed to me, the argument of counsel for the railways was almost exclusively devoted to the support of their contention that this Board had been given supreme authority in the matter of fixing railway rates; that the powers conferred upon the Board by the Railway Act had superseded the restrictive provisions of the Crowsnest Act, in regard to maximum rates; and that the “chaotic” and “intolerable” conditions admittedly created by the sectional application of the rate tariffs of July 7, should be cured by the Board reinstating the rates as they stood before that date. Counsel for the railways were asked why they had not brought their request that the Board allow rates above the maximum of the Crowsnest Act to the consideration of the Board before filing their discriminatory tariffs of July 7. If they had done so, and the Board had been able to agree with their views as now expressed, the existing “chaotic” and “intolerable” business conditions would have been avoided. To this question they had no convincing reply to offer.

I am unable to find in the Railway Act or elsewhere support for the contention that Parliament has at any time shown even a disposition to abdicate its authority in regard to the regulation of railway rates. Parliament has always had the power to regulate those rates, except when it divested itself of that power by specific agreement. One of the chief purposes of the Crowsnest Act was to secure a return to the Governor in Council responsible to Parliament, of some measure of the power to regulate rates on the Canadian Pacific Railway, which had been granted away in what was known as the ten per cent clause of

the original Canadian Pacific Railway Act. The other important purpose of the Act was to amicably secure reduced rates on what were considered as basic commodities in the trade between East and West.

The Railway Commission was created in the early years of the period of our greatest railway expansion. New conditions were arising; the time had come for the correction of many abuses. It was not possible for the Governor in Council to give these matters the attention which the new and growing conditions demanded. The Railway Commission was created and empowered to do that work; to relieve the Railway Committee of the Privy Council from the burden of detail and to more efficiently give effect to the intent of Parliament as expressed in railway legislation from time to time. The powers of the Railway Committee of the Privy Council were placed in the Board's hands to be exercised with care and discretion. But the Governor in Council did not divest himself, and therefore did not divest Parliament of authority in the matter. On the contrary the right to revise any or every decision of the Board specifically rests with the Governor in Council alone, and with no other power or authority.

Section (52), subsection (1) of the Railway Act, provides:—

“The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made *inter partes*, or otherwise and whether such regulation is general or limited in its scope and application; and any order which the Governor in Council may make with respect thereto, shall be binding upon the Board and upon all parties.”

The Crowsnest Act has been in force for twenty-seven years. From the date of its passage in 1897 until 1918, that Act was never disturbed, nor was the comprehensive and binding nature of its provisions ever questioned. When during the stress of war conditions, an increase of railway rates above the maximum fixed in the Crowsnest Act was assumed to have become necessary, the Governor in Council on July 18, 1918, acting under the extraordinary provisions of the War Measures Act, instructed this Board to prepare a schedule of increased railway rates, to correspond with the increases then recently granted the railways of the United States. The Board duly reported as instructed, and on July 27, 1918, the new rates were given effect by Order in Council. The responsibility for ignoring the maximum rates fixed by the Crowsnest Act in that rate increase was assumed by the Governor in Council in the following words:—

“Notwithstanding the provisions of any Act of the Parliament of Canada or of any Provincial Legislature heretofore passed, or of any rate limiting agreement heretofore made, the charges for the carriage of freight on all railways owned, operated or controlled by the Government of Canada, and all other railways subject to the jurisdiction of the Parliament of Canada, shall be increased to the extent and in the manner hereinafter set out.”

The wording of the paragraph of the Order in Council giving effect to rates which increased the rates fixed by the Crowsnest Act, leaves no room to doubt that the Government of the day was fully impressed with the belief that in its hands lay the sole power to make that increase, and that its power to do so was derived from Parliament, solely through the terms of the War Measures Act.

The powers conferred on the Governor in Council by the War Measures Act ceased on January 1, 1920, so far as railway rates were concerned, and therefore, the exemption from the Crowsnest rates which had been granted by Order in Council ceased on that date.

As conditions regarding railway rates were still considered to be unfavourable to the railways, and it was therefore necessary that rates higher than those of the Crowsnest Act should be allowed (in anticipation of the expiry of the War Measures Act), an amendment was made to the Railway Act, suspending for three years the effect of the Crowsnest Act as to railway rates. This amendment is subsection (5) of section 325 of the Railway Act, assented to on July 7, 1919.

The subsection reads as follows:—

“Notwithstanding the provisions of section 3, the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates, and to change and alter rates, as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada, whether general in application or special and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the company; provided that this subsection shall remain in force only during the period of three years from and after the date of the passing of this Act.”

This amendment established fully the intent of the Government and of Parliament to retain in full effect the provisions of the Crowsnest Act as to rates, although suspending their operation, because of special conditions for a specific period, which period expired on July 7, 1922.

I desire to call attention to the following provision of the subsection above quoted:—

“The Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the company.”

A condition of undue and injurious discrimination results from the filing of the tariffs of July 7. The provisions of the Crowsnest Act are the excuse offered for the filing of these tariffs. The Act of 1919 says in express terms that the Board shall not excuse the charge of unjust discrimination against the railways in such a case. It is true that the provision quoted is not now in force, but it expresses clearly the principle that discrimination such as that brought about by the tariffs of July 7 should not be allowed by the Board.

During the period from January 1, 1920, to June 28, 1922, this Board, in the exercise of the authority conferred upon it by the amendment of 1919, made several revisions of rates, without regard to the Crowsnest Act. On September 20, 1920, an increase over the rates that had been granted in 1918 by Order in Council was granted by order of the Board, amounting to 40 per cent in Eastern and 35 per cent in Western territory; 20 per cent on all passenger fares; 30 per cent on sleeping and parlor car fares and 20 per cent on excess baggage.

As time went on conditions as to railway traffic changed, and from time to time reductions were made by order of the Board. As the end of the three year period of exemption from the rate provisions of the Crowsnest Act approached, representations were made by the railways directly to Parliament and to the Government, urging that the statutory exemption from the rate provisions of that Act be continued by an amending statute. As a result, subsection (5) of section 325 of the Railway Act of 1919 was amended by chapter 41 of the Statutes of 1922, to re-establish in full effect the Crowsnest rates on grain and flour, while leaving the rates on other commodities mentioned in that Act subject to the jurisdiction of the Board for a further period of one year, and subject

to further extension by order of the Governor in Council for another year. The extension of one year by Order of the Governor in Council was granted. This extension expired on July 6 last and the Crowsnest Agreement then came into full force, with all the effect that had ever been given it by Parliament.

Urgent representations were made to the Governor in Council by the railways during the recent session of Parliament, which prorogued shortly before the effect of the 1922 amendment to the Railway Act had expired, asking for a further suspension of the provisions of that Act. After these representations had been very fully considered by the Government, the proposal was not submitted to Parliament, nor was any other action taken by the Government. Under such circumstances, there can, in my opinion, be no ground for believing other than that Parliament fully understood the situation in regard to the Crowsnest Act and was fully decided that the Act should come into complete force and effect without further delay.

As I understood the representations made in this case in behalf of the railways, they amounted to the assertion that the Board of Railway Commissioners created by Parliament is vested with power to set aside specific provisions of an agreement to which one of the railways was a party and whose conditions became the important feature of an Act of Parliament. I have been unable to find warrant for such a view either in the Acts of Parliament or in the procedure hitherto followed by the Government in dealing with the situations that have arisen out of the administration of the Crowsnest Act.

I am equally unable to find support for the conclusions advanced by the railways in the procedure followed by themselves. I find that on the two occasions in 1919 and 1922 on which the Crowsnest Act was over-ridden by Act of Parliament, the railways were active in securing that result by the presentation of facts and arguments to the Government and to Members of Parliament. They were equally active, though less successful, during the recent sessions of Parliament. Their appeal to this Board to attempt an exercise of authority on their behalf in defiance of the will of Parliament as that stands and is expressed in the Crowsnest Act, would be entitled to greater consideration, if their present assertions were not contradicted by their former actions. They went to Parliament in 1919, in 1922 and again in 1924; evidently it was only when they had failed to favourably impress the Government and Parliament in 1924 that they made the discovery that this Board had power to ignore the expressed will of Parliament, as embodied in the Crowsnest Act.

As to the fourth question: —

The railways made their chief argument in support of their contention that the Board had power to increase railway rates over the Crowsnest maximum, but they did not offer any evidence or argument to show that the rates should be so increased, although it will no doubt be admitted that increase of Crowsnest rates was their final objective.

It is easy to understand that an agreement made under the conditions of twenty-seven years ago may very well be out of line with present requirements in important particulars. In so far as the Crowsnest Act is so out of line, its usefulness is decreased. Certainly its details would be different if it were being drawn up to-day, with the same objectives, but adapted to present conditions. The people of Canada, through their Parliament, are one of the parties to this agreement; the Canadian Pacific Railway Company is the other. So far as the country is concerned, its part of the agreement has been fulfilled. The Government, subject to the sanction of Parliament, is therefore, in a position to revise the agreement at any time that it can come to terms with the other party to it. As I understand the case, that is a matter for the consideration of the Government; it is not a matter in which the Railway Act gives this Board any authority or right to interfere.

Of course at any time the Government might, as in 1918, call upon the Board to report as to a revision of the Crowsnest Agreement, or might cause

the Railway Act to be amended as in 1919, to give power to the Board to altogether ignore the Crowsnest rates, or to ignore them in part as in 1922, for the purpose of giving increases. The fact that none of these things have been done, leads to the conclusion that the Government has not been convinced that railway rates should be maintained at the levels prevailing up to July 7.

In the discussions that have taken place in this connection, it has been generally assumed that increase of rates means increase of revenue to the railways. That is only true if the increase is not "more than the traffic will bear." It is the same with railways as with any other business. Profits can only be made while business can be done. Traffic must be created before railways can carry it. Unless rates are such as will permit the creation of traffic, they cannot be profitable to the railways. The recent reductions of prairie grain rates, both east and west, have been reflected in an increased producing acreage, even in the face of depressed world prices. Had railway rates gone up instead of down in 1922, and since, there can be no question that also would have been reflected in decreased production. High fixed charges cannot be met out of light traffic, no matter how high the rates may be placed. The higher the rates, the less the traffic is the rule.

It is true that once wheat is produced it must be marketed; and that if rates on grain were increased at the present time, the crop now being marketed would have to pay the increased rates. But if the increase were made, all the probabilities are that next year would see either a lessened increase or an actual decrease in production, which would be reflected in reduced railway earnings.

The manufacturers of eastern cities who are cut off from their western market by the discriminatory rates of the tariffs of July 7, cannot furnish traffic for the railways as they could if they had been able to supply their western customers.

Railways must be paid for the service they give. The principle of the Crowsnest Act is,—Low rates on basic commodities and higher rates on other articles. That is universally recognized as a sound principle in the adjustment of railway rates. I have been unable to gather from the facts or arguments presented on behalf of the railways that it would be desirable in the interests of either the country or the railways to depart from that principle by increasing the rates on basic commodities, such as are affected by the Crowsnest Act.

My conclusions therefore are:—

(1) The Crowsnest Act applies to all lines and connections of the Canadian Pacific Railway in Canada, and therefore, the rates as defined by that Act should be applied forthwith throughout the Canadian Pacific system;

(2) In pursuance of the powers vested in this Board to prevent discrimination in railway rates and services, the rates defined by the Crowsnest Act should be applied to the Canadian National system and to all other railway lines in Canada;

(3) This Board was created and empowered for the more efficient enforcement of the Acts of Parliament regarding railways, and therefore, cannot set aside any part of the provisions of any such Act, but on the contrary, is bound to loyally enforce those provisions;

(4) While it would be quite in order for the Government to negotiate a new arrangement with the Canadian Pacific Railway Company in the place of the Crowsnest Act, I am of the opinion that such an agreement, having due regard to the promotion of trade between Eastern and Western Canada, should maintain the principle of low fixed rates on basic products established by that Act.

In view of the conclusions, as above set forth, I feel compelled to dissent from the majority judgment of the Board.

OTTAWA, ONT., October 6, 1924.

GENERAL ORDER NO. 408

In the matter of various complaints against certain tariffs of the Canadian Pacific and the Canadian National Railway Companies, arising out of the restoration of Crowsnest Pass Rates, so-called.

File No. 32812.1

TUESDAY, the 14th Day of October, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, September 17, 18, 22, 23, 24, 25, and 26, 1924, in the presence of counsel for and representatives of the Railway Association of Canada, the Canadian Pacific, Canadian National, and Toronto, Hamilton and Buffalo Railway Companies, the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, and Prince Edward Island, the Cities of Edmonton, Saskatoon, and Brantford, the Town of Victoriaville and Smiths Falls, the Boards of Trade of Edmonton, Saskatoon, Toronto, Montreal, and Smiths Falls, the Chamber of Commerce and the manufacturers of Brantford, the Ontario Associated Boards of Trade and Chambers of Commerce, the Canadian Manufacturers' Association, the Kitchener and Waterloo Manufacturers' Association, the British Columbia Railway Rates Adjustment Association, British American Paint Company of Victoria, Acadia Sugar Refinery Company, Limited, Atlantic Refinery Company, Manitoba Rolling Mills Company, the National Dairy Council, the Canadian Council of Agriculture, the Fruit Growers of Canada, Eastern Furniture Company, Limited, Chair Manufacturing Company, Plymouth Cordage Company, Page-Hersey Tube Company, the Canadian Roofing Manufacturers' Association, and Frost and Wood, the evidence offered, and what was alleged,—

The Board Orders: That the following tariffs, namely:—

Canadian Pacific Railway, C.R.C. No. E-4137.

Canadian National Railway, C.R.C. No. E-765.

Canadian Pacific Railway, C.R.C. No. W-2757

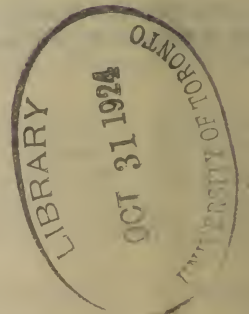
Canadian National Railway, C.R.C. No. W-391.

be, and they are hereby, disallowed and required to be withdrawn from operation within fifteen days from the date of this Order.

H. A. McKEOWN,

Chief Commissioner.

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Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, November 1, 1924

No. 17

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Application of the Hudson's Bay Company, Vancouver, B.C., for ruling of the Board as to the proper classification of seat forms or cushions for Chesterfields and Chairs included with a carload shipment of mixed furniture.

File 33365.1

JUDGMENT

McLEAN, Assistant Chief Commissioner:

In the present application, there is concerned the question of the classification rating of certain articles which are described by the applicant as being "seat or mattress forms" to complete Chesterfield suites and chairs.

A car of mixed furniture was shipped, including *inter alia* several partially upholstered Chesterfield suites and chairs, including in said car "seat or mattress forms" to complete both the Chesterfields and chairs. In addition, there were included forty-eight chair and Chesterfield "seat or mattress forms" which did not belong to any of the Chesterfields or chairs included in the car.

Under the classification, mixed furniture, in carlots, is 4th class. The additional "seat or mattress forms" were charged for by the railway as an L.C.L. shipment, and were subjected to a rate of $1\frac{1}{2}$ times 1st class.

Two questions affecting the classification are involved: (1) the rating of the articles in question; (2) the question whether the article which is stated to be unfinished may justifiably be classed higher than the finished article of which it is a component part.

Turning to the first of these, it is to be noted that there is no specific rating for the articles in question in the classification. In this as in other cases where there is not a specific rating, analogy has to be made use of.

The articles in question have been classed by the railway as being analogous to cushions, the rating for cushions, N.O.S., being $1\frac{1}{2}$ times 1st class. The applicant contends that they are analogous to mattresses. If this position is correct, they will be able to mix in a furniture car on the furniture rating.

The applicant, in support of its contention, points out that the extra "forms" involved are identical with those required to complete the Chesterfield suites and chairs above referred to. Following this line of reasoning, it objected to different rates being charged on identical articles. In support of this contention, it says that under proposed classification No. 17, these articles are

rated as furniture. In reply, the railways state that this is incorrect, as under proposed classification No. 17 it is not proposed to include these articles, described by the railways as cushions, in the furniture list, except when they form part of the furniture shipped. The L.C.L. rating has been lowered to 1st class.

Dealing, first, with the arrangement whereby these articles are allowed to mix when they are part of the complete suite or chair, it may be noted that the argument in regard to the unfinished article being classed higher than the finished article is not conclusive. In this case, the unfinished article, which has no carload rating and which is light and bulky, is allowed to mix with furniture on a 4th class rating in carloads when it is a component part of the completed article.

The Board has had before it, in connection with the construction of Rule 14, subsection (k) of the classification, a matter which while not on all fours with the present application is of some value in connection with its determination.

In application of the Security Traffic Bureau of St. Paul, Minn., for a ruling of the Board as to the proper classification of iron weights shipped with Hanging Lamps from Duluth to Winnipeg,—Board's Judgments and Orders, Vol. XI, p. 335, there was involved the construction of rule 14, subsection (k), which reads as follows:—

“Parts or pieces constituting one or more articles offered for shipment at one time by one consignor or one consignee will be rated at the rate provided for the complete article whether set up or knocked down, as the case may be.”

In this case, the shipment involved moved from the shipment point to Duluth under the American Classification, and from Duluth to Winnipeg under the Canadian Classification. There were iron weights accompanying the adjustable lamps which the applicants considered might be described as castings; and they, therefore, asked the Board to rule that the 4th class rate in the Official Classification be made to cover the United States portion of the haul and the 3rd class for the Canadian haul. It was contended by the representatives of the railways that the counter-balance weights shipped with adjustable hanging lamps were part of the completed article, and that while these weights might be shipped as castings under a separate bill of lading as 3rd class, the higher classification attaching to the completed article applied when they were shipped as part of the completed article. The shipment in question, which was a less-than-carload one, had a 1st class rating in the Canadian Classification.

The Board held that the rule was specific and that there was no justification for departure from it.

As pointed out, in the present instance the article involved, mixing in a carload of furniture, is one which is a component part of the particular item of furniture, and is given the advantage of the lower rate which attaches to the carlot movement.

An article, if specifically set out under the Classification, has a rating taking into consideration the various factors affecting the place of an article in the Classification, e.g., value, bulk, risk or hazard in handling, liability to waste or damage in transit, method of packing for shipment, etc. The rating so fixed has no necessary relation to the rating of the article into which it may enter as a component part. The fact that it takes the rating of the larger article of which it becomes a component part may mean as to this component part alone either a lower or a higher rating than it has when separate. In the present instance, the rating of the component part is lower. On the other hand, wooden-hooped barrels, N.O.S., have a rating of $1\frac{1}{2}$ times 1st class, L.C.L., and 7th class C.L. minimum 18,000 pounds. Wooden hoops have an L.C.L. rating of 4th class and a 10th class rating with a minimum of 24,000 pounds.

Turning now to the articles involved. Are they for classification purposes analogous to cushions or to mattresses?

In Catalogue A, issued by the Comfy Cushion Company, Toronto, comfy cushions, which, I understand, are the type of cushion now under consideration, are described as being constructed of small steel, spiral springs, each spring compressed and sewn into a cotton pocket, these compartments being clipped together top and bottom completing the spring construction; the whole being then covered with a layer or pad of felt, hair or other material and enclosed in an outer casing of cotton and subsequently covered with upholstering material to suit the purchaser. They are used as seat forms in Chesterfields, chairs, etc.

In the Catalogue of the Fischman Spring Company of Kitchener, Ont., the article which is herein involved is described under the heading of "Loose spring cushions for Chesterfields, chairs, etc." The construction is the same as has already been pointed out.

The article is described by the manufacturers as a cushion. The reduction from $1\frac{1}{2}$ times 1st class to 1st class in the proposed Classification No. 17 was arranged between the manufacturers of these cushions and the Classification Committee. The manufacturers of furniture did not take part in this.

Considering what has been advanced by way of analogy and bearing in mind the trade significance of the term, and the fact that the revised provisions of proposed Classification No. 17, which are invoked by the applicant, dealt with a matter in which the furniture manufacturers did not take part, it would seem that the analogy of cushions is not unreasonable.

The fact that an article is light and bulky is one factor bearing on the justification of a higher classification rating. The fact that these cushions are given consideration in mixing as parts or units of furniture does not show that a wrong practice is being made use of. In the case of the lamp shipments referred to, including the weights as part of the shipment, placed a higher burden upon these weights than the separate classification rating for the item provided. With the cushions, the result is different. Other articles were referred to in the correspondence and at the hearing as bearing on the situation that an article shipped as a component part of a particular unit received a rating treatment different from that attaching when it is shipped separately. In this as in other matters, classification proceeds on averages.

The application as launched should be dismissed.

October 6, 1924.

Commissioner Boyce concurred.

COMMISSIONER OLIVER:

The application arose out of the shipment of a carload of mixed furniture from Waterloo, Ont., to Vancouver, B.C., which contained besides finished articles of furniture of various kinds, a number of,—

"Partially upholstered Chesterfield suites, together with seat or mattress forms to complete both the Chesterfields and chairs; There were also in the car forty-eight additional chair and Chesterfield seat forms, ready for the final covering of damask, which did not belong to any of the Chesterfields or chairs in the car."

On these forty-eight seat forms the railway charged an L.C.L. rate amounting to \$25.70 over and above the carload rate paid for the car in which they were contained. The railway company claimed that these separate and uncovered seats were not in fact furniture, and should not be included as part of the mixed carload, but should be charged an L.C.L. rate as "Cushions."

The seats in question were in fact furniture in an unfinished condition. They were not "cushions" in the sense of being an article to be used merely as a "cushion." They were only to be used as part of an article of furniture.

As parts of articles of furniture, which were to be completed in Vancouver, they were as well entitled to the carload rate on mixed furniture as the partially upholstered Chesterfield suites and the seat and mattress forms (identical in make and material) necessary to complete both the Chesterfields and chairs, which were contained in the same car.

If they were to be considered as "partly finished" portions of furniture, to be completed in Vancouver, by the usually accepted rules applied to railway freight classification, they were entitled to a still lower rate.

For the reasons above set forth, I am unable to agree with the decision of the Assistant Chief Commissioner, concurred in by Mr. Commissioner Boyce.

OTTAWA, October 18, 1924.

*Application of D. D. Campbell, Winnipeg, Manitoba, for an interpretation of
Section 8 of the Bulk Grain Bill of Lading*

File No. 3678.7.4

Heard at Winnipeg, Manitoba, July 14, 1924.

JUDGMENT

COMMISSIONER BOYCE:

I have considered what is involved in this complaint with what was submitted at the hearing in Winnipeg. The interpretation of section 8 of the Bulk Grain Bill of Lading is involved. I am unable to see any difficulty in the matter. The interpretation of the section is plain. The proviso in the section requiring forty-eight hours' notice of the intention of the company to divert grain into another elevator than that to which it is consigned, is subject to plain exception in cases of grain consigned to Port Arthur, Fort William, and Westfort, Ontario. If then, effect is to be given to these words, and I think effect must be given to them, the forty-eight hours allowed to the party entitled to receive the grain after notice has been sent or given within which to remove it, does not apply to consignments to those three excepted terminals. The shipment in question was consigned to Fort William, one of the excepted terminals, to which the proviso was not to apply. That a particular elevator at that point was designated does not, I think, take it out of the exception, which manifestly includes all grain consignments to Fort William. Mr. Lannigan's statement at the hearing and the very cogent explanation he made for this exception to the proviso seem to clarify anything that was obscure in the section.

The Bulk Grain Bill of Lading filed at the hearing shows that the consignment in question was received at Webb from W. R. Johnston as shipper, September 24, 1923, by the Canadian Pacific Railway Company, consigned to the order of the Inter-Ocean Grain Company at Fort William. Notification was to be made to the Inter-Ocean Grain Company at Winnipeg, and the consignment was in care of the Mutual Elevator at Fort William. There is a notation on the copy filed, reading as follows: "To be unloaded at Canadian Government Elevator," signed, "W. R. Johnston, shipper." On this copy there is no endorsement, but on the copy enclosed by Mr. Flintoft in his letter of the 22nd of April, 1924, there is an endorsement reading as follows: "Deliver to order of Canadian Government Elevator," signed, "Inter-Ocean Grain Co., Ltd., per R. Huslable." The original bill of lading was not produced, but from these bills of lading filed and from what is stated by counsel for the applicants, it appears that the consignment went forward to Fort William, and there became subject to, and was dealt with, under the provisions of section 8 of the conditions, and was unloaded at the Canadian Government Elevator, appar-

ently with the concurrence in writing of both shipper and consignee, whether before or after it had been determined that the car should be set aside for survey. The fact is that the Bills of Lading did bear that notation. Whether they bore them or not, in my opinion, the provisions of section 8 would justify the railway company, in the circumstances, in dealing with the consignment as it did deal with it.

The claimant, at the trial, filed a formal claim before this Board for \$733.37 for wrongful delivery of his car of grain by the company. This Board, as was pointed out to the counsel for the applicant at the hearing, has no jurisdiction to entertain or adjudicate upon the pecuniary claim involved, and this was conceded by counsel for the applicant. Some reference was made, however, to the fact that there was, or would be, litigation in the courts. At the hearing, I expressed some hesitation as to the propriety of the Board giving an interpretation of the conditions of the bill of lading in view of the probability of litigation upon a pecuniary claim in provincial courts, and thereby, to some extent, embarrassing the provincial court in dealing with law as well as with fact, I am still of the same opinion.

Subject to the above, my opinion is, that the consignment was dealt with, under section 8 of the conditions of the Bulk Bill of Lading, in a manner in which, under the circumstances disclosed, the carriers might properly deal with the same.

October 9, 1924.

ASSISTANT CHIEF COMMISSIONER McLEAN:

What is involved is the interpretation of the proviso in section 8 of the Bulk Grain Bill of Lading. The provisions of the various forms of bill of lading, under which traffic moves, were worked out between representatives of the shippers, the Bankers' Association and the railways. The only particular in which the Board was asked to rule in settling the final form was in connection with the time limitation attaching to the filing of claims. The provision now involved is, therefore, one which was worked out in agreement by parties fully cognizant of conditions in the trade. The words appear to me to clearly show the intention. I agree in the reasons for Judgment of Commissioner Boyce.

October 18, 1924.

MEMORANDUM

Section 8 of the Bulk Grain Bill of Lading, of which an interpretation is desired, reads as follows:—

“Grain in bulk consigned to a point where the carrier has an elevator or warehouse, or where there is a public or licensed elevator or warehouse, may be delivered and placed with other grain of the same kind and grade, without respect to the ownership, and for the purpose of this, Port Arthur, Fort William and Westfort, Ontario, shall be deemed one point, provided that this shall not apply (except in cases of grain consigned to Port Arthur, Fort William and Westfort, Ontario), unless the grain is not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays), after written notice has been sent or given. Bulk grain so stored shall be held at the risk of the owner, and without liability on the part of the carrier.

“If a Dominion Government grain inspector shall decide that any part of the grain herein described is not dry or is otherwise unsuitable for warehousing, then what is so decided to be wet or unsuitable may, in the discretion of the carrier, at the owner's risk and expense, both as to trans-shipment and transfer or otherwise, be deposited in any avail-

able public or licensed elevator or warehouse equipped with special machinery for the treatment of unsound grain, to be there stored, elevated or otherwise treated, either separately or in common with other grain of similar class and on arrival there, ready for delivery, the carrier's liability in respect to it shall be ended."

The application for interpretation arises out of the consignment of a car of wheat from Webb, Sask., over the Canadian Pacific Railway, to the order of the Inter-Ocean Grain Company, Limited, in care of the Mutual Elevator, Fort William, Ont. The applicant states: That the car contained 2,044 bushels of wheat, of No. 1 Northern grade, and 85 bushels of No. 1 Northern with which was mixed 5 per cent of rye.

That the Grain Company refused to accept delivery of the car, because of the mixed condition of a part of the carload. The Inspection Service at Winnipeg had not given it a grade. The car was held at Fort William for resurvey by the Inspection Department from October 2. The contents were graded "Wheat and Rye." The car was released by the Inspection Department on October 14.

That on October 16, without notice to the consignor or consignee, and without instructions from either of them, the car was unloaded by the railway company at the Canadian Government Elevator. The content was placed in a bin with other mixed grain and its identity lost.

That as a result of the loss of identity, the consignor only received the price of mixed grain for the whole carload. If the identity of the grain had been preserved, the 85 bushels of mixed grain could have been deducted and the price of No. 1 Northern secured for the remaining 2,044 bushels. The difference to the shipper in the amount received for his car of wheat amounted to over \$700.

The applicant, as agent of the consignor, claimed that under the terms of section 8 above quoted, he was entitled to forty-eight hours' notice by the railway company of its inability to deliver as ordered (because of the refusal of the consignee to accept) before unloading elsewhere. Had he received such notice, he could have taken measures that would have protected the interests of the owner of the grain. Not having received notice, he was unable to do so.

In his statement of the case on behalf of the railway, the solicitor of the railway company says:—

"It is submitted that the provisions of section 8 of the Bulk Grain Bill of Lading are perfectly clear; to the effect that where grain in bulk is consigned to Port Arthur, Fort William or Westfort, it may be placed in an elevator belonging to the company or a public or licensed elevator with other grain of the same kind and grade without respect to ownership. The requirement as to 48 hours' notice does not apply to these points at all."

Where one of the parties to the dispute reads a certain condition as guaranteeing him forty-eight hours' notice before grain can be diverted, thereby giving him the opportunity to protect the interests in which he is concerned, while the other party reads it as not providing for any notice whatever, either before or after the diversion of the grain, it would seem to be established that section 8 of the conditions governing the Bulk Grain Bill of Lading is not as clear or as definite in its terms as it should be. As these conditions are only effective subject to the sanction of this Board, it would seem that the application to the Board for an interpretation is entirely in order and calls for a definite ruling in reply.

If the interpretation given by the solicitor for the railway company is accepted, the result is very far reaching. No matter who the grain may be consigned to, the railway may deliver it to whoever it pleases, at either of the three points at the lakehead, at its convenience and without notice of any kind,

either before or after such delivery to any person or interest. If that is the actual meaning of the section, it would seem that a revision of its terms, to preserve in some measure the rights of owners in their property, would be in order.

The necessity for special conditions governing the transport and delivery of grain in bulk arises from the fact that when a carload or any other specific quantity of grain in bulk goes into storage under the usual conditions, it loses its identity by being mixed inextricably with other grain. Once the grain has been delivered into storage, the right of ownership in that specific volume of grain is lost, and in its place the owner accepts a right of ownership of an equal volume of grain of the same grade, as defined by Government inspection.

It is a fundamental principle of this system of handling grain, that identity of grade must be established by inspection before identity of the grain itself is allowed to be lost by its removal from the car in which it was shipped to the elevator or place of storage. The provisions of section 8 as to transfer from car to elevator only apply after the grain has been inspected. The words are:—

“May be delivered and placed with other grain of the same kind and grade without respect to the ownership.”

Obviously inspection must be made before the “kind and grade” can be decided for purposes of storage. Up to the time of final inspection, for railway freight purposes, bulk grain differs in no respect from any other ordinary commodity, and when it is refused by the consignee before an inspection certificate that it is fit for storage has been granted, it is and can only be subject to the rules ordinarily governing the shipment of any other commodity.

During the fourteen days in which the car in question stood at Fort William awaiting inspection, it was subject to the conditions governing ordinary commodities in carloads, which have been refused by the consignee, and had not yet come within the provisions of section 8 of the conditions governing bulk grain bills of lading. That being the case, I beg to submit that the contention of the railway solicitor that under section 8 above mentioned, the railway was relieved from giving notice to the shipper of the refusal of the consignee to accept the grain for storage is not valid, and had no warrant in the clause of section 8 quoted by him.

I beg to further submit that the railway solicitor's interpretation of section 8 would not apply in any case in which a car of bulk grain was refused by the consignee before inspection. Also that equally it would not apply in case a consignee refused to accept for ordinary storage a car that had been inspected as fit for storage, as might be the case if there was no room in that particular elevator for storage of the kind or grade of grain which the car contained. If the consignee refuses to accept delivery the car must remain in the hands of the railway as an ordinary commodity, until the shipper directs it elsewhere. To do this, he must be given notice in order to properly protect his interest, in accordance with established custom.

While section 8 provides that at the lake terminals bulk grain may be delivered according to identity of grade, without special order of the shipper, it also provides that at all other points there must be forty-eight hours' written notice before delivery can be made that does not preserve the identity of the grain. This provision protects the right of the shipper in the identity of his grain at all points where transportation conditions do not demand rush delivery. At the lake terminals, only, the shipper must accept delivery into storage according to grade instead of insisting on separate storage of the actual grain; but there is no suggestion that the order for delivery to the particular consignee can be ignored without instruction from the shipper.

It will be noted that in the second part of section 8, in which grain not in condition for storage as to grade is dealt with, and by the terms of which, under certain well-defined conditions grain may, on the responsibility of the

carrier, be diverted from the elevator to which it had been consigned, to another without notice to the shipper, the following words are used:—

“ May, in the discretion of the carrier . . . be deposited in any available public or licensed elevator equipped with special machinery for treatment,” etc.

That is to say, when it is intended to allow the diversion of grain not in condition for bulk storage from the elevator to which it was consigned to another, that intention is clearly expressed and the special reasons that make such action necessary are clearly defined. Had there been any intention of allowing grain in condition for bulk storage to be delivered to an elevator to which it had not been consigned, it can only be assumed that that intention would have been as clearly expressed as in the case of grain unfit for storage, and the reasons as clearly given. As the reasons which make necessary the provision in regard to grain not fit for bulk storage do not exist in the case of grain inspected fit for bulk storage, no reason could be given for allowing diversion at will of such grain by the railways. If there had been any intention of allowing such diversion, it would have been definitely expressed; not having been expressed it cannot be presumed to exist.

I would further respectfully submit that if it has been the practice of the railways to divert grain at will without notice, in accordance with the interpretation given the first part of section 8 by the railway solicitor, it would be well that the section should be so amended as to leave no question that that is not a proper interpretation.

The latter part of section 8 specifically permits the railway to divert, without notice, grain “unsuitable for warehousing,” from an elevator to which it has been consigned to a hospital elevator for treatment, presumably such treatment as will make it suitable for warehousing. While the provision is chiefly intended to apply to wet grain, it specifically included grain declared “otherwise unsuitable for warehousing,” by a Dominion Government grain inspector. The Inter-Ocean Grain Company refused to accept the car of grain in question until it had been inspected. It was found on inspection to be mixed wheat and rye, and therefore unsuitable for warehousing in the Mutual Elevator. It would seem that the latter part of section 8 clearly provides that in such case the car should have been delivered to a hospital elevator for such treatment as would have fitted it for ordinary storage. Notice to the consignor is not required, but the burden of ordering the proper disposition of the grain is distinctly laid upon the railway company, as a condition of being relieved of responsibility in regard to the delivery of the car as ordered. The loss suffered by the consignor was not because of any lack of definiteness in the terms of section 8, but because the plain directions of section 8 were not followed by the railway company in their delivery of the grain.

F. OLIVER.

OTTAWA, September 19, 1924.

Application for approval of plans showing alteration of track layout at Port Colborne, Ont., which has been made necessary by the new location of the Welland Canal.

File 33251

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Plans in this matter were duly filed. Subsequently, the Board was advised by counsel for the town of Port Colborne that the town desired to be heard in opposition to the proposed new location, it being claimed that the location

of the station and freight shed at the places indicated on the plans supplied would be most detrimental to the public interests of the town of Port Colborne.

The application as filed by the railway read as follows:—

“CANADIAN NATIONAL RAILWAYS,
“MONTREAL, February 27, 1924.

“A. D. CARTWRIGHT, Esq.,
“Secretary, B.R.C.,
“Ottawa, Ont.

“DEAR SIR,—I am sending you five blue-print copies of a plan showing the alteration of our track layout at Port Colborne in the province of Ontario, which has been made necessary by the new location of the Welland canal.

“The station and freight facilities are being moved and there is a good deal of new construction and certain lines cross highways. The approval of these changes is asked under sections 188 and 256 of the Railway Act.

“The diamond crossing at the present station will be eliminated and certain other changes made which will appear by reference to the plans, and which are outlined hereafter as follows:—

“Additional track crossing Welland street, south of the Dunnville Subdivision.

“New connection marked (A) north of the main line occupying a portion of Welland street crossing Alma and Fraser streets.

“Change in location of station from the present diamond crossing east of the canal to the proposed site between the canal and King street.

“Change in location of freight shed from present location east of the canal to proposed site immediately west of King street.

“One additional track across King street.

“Three additional tracks and lead of turn-out across Catharine street.

“Two additional tracks across Elm street on Dunnville Subdivision.

“Two wye connections across Elm street between Dunnville Subdivision and Niagara and St. Catharines Electric Railway, the latter marked ‘C’ and ‘D’ respectively.

“One track across unopened portion of Princess street marked ‘D’.

“Alteration in alignment of track now crossing the intersection of Park and Fielden streets.

“One additional track across Fielden street.

“Mr. J. W. Pugsley, Secretary of the Department of Railways and Canals, has requested us to file these plans and to ask the Board to take as prompt action upon this application as possible.

“A copy of the plans and of this letter are being sent to Mr. T. A. Lannan, Mayor of the town of Port Colborne.

“Yours truly,

“A. FRASER.”

Following this, inspection was made by the Board's Assistant Chief Engineer, who reported favourably upon the application, with the exception of the second stub track north of the proposed freight shed. On the plan as filed, two stub tracks were shown on the right of way adjacent to King street. One of these runs in front of the proposed freight-shed, and the other is a

little to the north. Exception is taken by the Engineer to the most northerly of these tracks, on the ground that it would be objectionable from the standpoint of safety, in that cars left standing on it would obstruct the view of east-bound trains until one was almost on the track. The elimination of this stub track would mean one less track across Catharine street. The Engineer pointed out, further, that the head block of the switch to the proposed freight-shed as located would be almost in the middle of the street, and would have to be moved off the travelled portion of the road.

Copy of the Engineer's report went to the counsel for the town of Port Colborne, which objected to the terms of same and asked for an opportunity of being heard.

The existing station is located on the east side of the canal; the existing freight shed is located about 850 feet to the south thereof. The rearrangement is necessitated by the reconstruction of the Welland canal. The existing freight-shed is at a point which will be taken up by the new construction of the canal.

The proposed station is on the west side of the new canal construction, about 750 feet from the old station; and the freight-shed is proposed to be located adjacent to the new station, being separated from it by King street.

Counsel for the town of Port Colborne said there was practically no objection to the passenger station being located on the west side of the canal at the point desired, but that there was objection to having the freight-shed and sidings located at the point proposed on account of the proximity of residential property.

Counsel for the town asked that the town be heard. A conference at which counsel was present was held in the office of the late Chief Commissioner Carvell on Friday, May 16, 1924. An inspection was also made by the late Chief Commissioner Carvell. A further inspection was made on Tuesday, May 27, 1924, by Commissioners Boyce, Oliver and myself.

The three Commissioners who made the inspection on May 27, left shortly afterwards to hold sittings in the West. Under date of June 27, the late Chief Commissioner Carvell instructed Mr. R. H. Fish, the General Superintendent, that the Board would approve of the plans so far as the location and construction of the station building was concerned. It was further set out that the approval of the remainder of the plan, especially with reference to the freight-shed and trackage in connection therewith, was to remain in abeyance until the return from the West of the three Commissioners who had made the inspection above referred to, I find the same statement set out in a letter of July 4, 1924, addressed to the Secretary of the Department of Railways and Canals.

The matter was thus standing for consideration. The death of the late Chief Commissioner prevented the question of the freight-shed being gone into.

As pointed out, the matter has been gone into from an engineering standpoint. Consideration has been given to the question of relative business advantages, it appearing that about two-thirds of the population live west of the canal, and that the business street on the east side will be eliminated by the construction of the canal. Inspections have been made by members of the Board; and representations made in conference have been considered. I am of opinion that, subject to the exceptions, above referred to, set out in the report, the recommendation of the Board's Engineer as set out in his report should be accepted.

Before writing this memorandum, I discussed the matter with Commissioner Oliver, who is now out of town; and I am authorized to say that he concurred in the opinion I have above set out.

October 22, 1924.

Commissioner Boyce concurred.

ORDER No. 35652

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Cutknife to Whitford Lake Branch, mileage 0, at Cutknife, to mileage 45.65, at Unwin, Saskatchewan.

File No. 10758.21

MONDAY, the 29th day of September, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*HON. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Cutknife to Whitford Lake Branch, mileage 0, at Cutknife, to mileage 45.65, at Unwin, in the province of Saskatchewan.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 35635

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its eastbound main line between mileage 94.79 and 101.68, Sprague Subdivision. .

File No. 33349.1

TUESDAY, the 7th day of October, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*HON. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its eastbound main line between mileage 94.79 and 101.68, Sprague Subdivision, a distance of 7.05 miles.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 35638

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Archive-Wymark Branch, mileage 38.68 to 50.1.

File No. 29353.16

FRIDAY, the 10th day of October, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*HON. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby authorized to open for the carriage of traffic that portion of its Archive-Wymark Branch, mileage 38.68 to 50.1, a distance of 11.42 miles.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35643

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Gravelbourg Subdivision between mileage 109 and 119.8.

File No. 13975.175

FRIDAY, the 10th day of October, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*HON. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby authorized to open for the carriage of traffic that portion of its Gravelbourg Subdivision between mileage 109 and 119.8.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35694

In the matter of the application of the Glengarry and Stormont Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, 1919, for approval of Supplement No. 1 to its Tariff C.R.C. No. 178, on file with the Board under file No. 22902.20.

TUESDAY, the 21st day of October, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Supplement No. 1 to its Tariff C.R.C. No. 178, on file with the Board under file No. 22902.20, be, and it is hereby approved; the said Supplement, with a copy of this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 35698

In the matter of the application of the Nipissing Central Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic, that portion of its Swastika-Wendigo Lake Branch, between Swastika and Larder Lake.

File No. 11014.17

WEDNESDAY, the 22nd day of October, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Swastika-Wendigo Lake Branch from Swastika to Larder Lake, in the province of Ontario, a distance of 22.5 miles.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 35700

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic, the Grand Trunk Pacific main line from Yellowhead Pass, mileage 17.2 Albreda Subdivision, to a point near Rainbow, mileage 35.8 Albreda Subdivision, including a connection with the Canadian Northern Alberta Railway at the east and west ends.

File No. 3452.153

WEDNESDAY, the 22nd day of October, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic, the Grand Trunk Pacific main line from Yellowhead Pass, mileage 17.2 Albreda Subdivision, to a point near Rainbow, mileage 35.8 Albreda Subdivision, including a connection with the Canadian Northern Alberta Railway, at the east and west ends.

S. J. McLEAN,
Assistant Chief Commissioner.

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The Board of



Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

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No. 18

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OTTAWA, October 23, 1924.

Re *Train Service, Tignish-Summerside-Borden and Charlottetown,*
Canadian National Railways

File 32741

THIS REPORT IS ISSUING AS THE

JUDGMENT

OF THE BOARD IN THIS MATTER.

The hearing of the above case was held at Summerside on Friday, October 17, and at Charlottetown on Saturday, October 18. The Summerside Board of Trade, supported by petitions and letters, asked that the morning passenger train leave Tignish at 7 o'clock instead of 10 o'clock as has been run during the present summer season in order that people might reach Summerside at or about 10 o'clock in the forenoon instead of at or about 1 o'clock in the afternoon. Delegations from Tignish and neighbouring places appeared to protest against any change, arguing that the present hour of departure from Tignish was better for their interests. The petition and argument from the Tignish end of the line called attention to the necessity of having a train service that would allow time to make a connection with the first trip of the boat from Borden during the summer season, and for a train back for the western end of the line, namely Tignish, after the arrival of the last inward trip of the ferry.

During the discussion attention was called to the fact that with the late departure from Tignish a passenger from any point west of Summerside could not get to any point east of Charlottetown the same day.

At Charlottetown the Board of Trade of that city asked particularly to have a service between the island and the mainland that would provide two trips per day of the car ferry for passengers to reach the island from the mainland instead of one as proposed by the company during the winter season, and, in addition, attention was called to the fact that a passenger could not get into Charlottetown from a point west of Summerside and return the same day. The present schedule is:—

Leave Tignish 10.00 a.m., arrive Summerside 1.10 p.m.

Leave Summerside 1.45 p.m., arrive Charlottetown 5.00 p.m.

The last trip west from Charlottetown leaves that point at 4.20 p.m., arrive Summerside 10.35 p.m. The company in order to meet the complaint in part established on June 19 a motor coach service between Summerside and Tignish, leaving Summerside 10.45 p.m., arrive Tignish 1.55 a.m., and returning leave Tignish 3.35 a.m., arrive Summerside 6.45 a.m. This enabled a connection to be made with a train leaving Summerside 7.00 a.m., arriving Charlottetown 10.30 a.m. This service is temporary and will be discontinued at the end of the present month for the reason that it is intended to reduce the car ferry to one trip per day, and the motor coach cannot be operated during the winter season. Consequently the complaints can be considered as having reference to the steam train operations.

The company were not represented at the Summerside hearing, but in connection therewith the superintendent, Mr. Grady, advised that the company were not particular as to what time the train was to be started from Tignish, and that they had arranged it at the hour which seemed to suit the west end of the island. The company were represented at the Charlottetown hearing, and represented strongly that the application of the Charlottetown Board of Trade for an earlier trip of the car ferry to take passengers to the island that arrived at Sackville by the Ocean Limited (eastbound) at 6.00 p.m., and who have to stay overnight at Sackville, could not be provided without running considerable risk of delay and possible accident to the boat on account of having to operate it during the hours of darkness. A letter from Captain Read of the ferry *Prince Edward Island* sets out the difficulty of night operation, and attached thereto are statements showing the performance of the boat, all of which is against undertaking a passenger trip from Tormentine early enough in the morning to reach Borden so as to make the regular trip now scheduled to leave that point at 9.05 a.m.

After discussing the matter with the railway officers and Captain Read, getting their arguments for and against the different suggestions made, I think that the best that can be done for the people, this season at least, would be to arrange a train service that will carry the passengers from Sackville to Tormentine to connect with the boat on its arrival from Borden on the trip mentioned above, and by giving consideration to the application of the Summerside people for an earlier departure from Tignish, start the train from Tignish at an hour suitable to make connection with the train carrying passengers from the mainland at Emerald Junction, and reaching Charlottetown at or about 2 o'clock p.m. By putting into effect the suggestions herein made a passenger can leave Tignish and go to any point east of Charlottetown the same day, as the trains for Souris, Georgetown, and Murray Harbour all leave Charlottetown after the suggested arrival from Tignish, namely 2 o'clock, and I would recommend that this be done, effective November 1, the service from Sackville to the island to be continued until January 3, 1925, inclusive, unless the business would seem to warrant the company continuing it throughout the winter. The change in the departure of the train from Tignish to be continued until further order of the Board.

I attach hereto a skeleton schedule of the different items of the time table that should, in my opinion, be arranged. The change in the departure of the mixed train from Tignish is a suggestion.

If this is given effect to it will to a considerable extent be an easement for the people at that end of the line who find the present 10 o'clock departure to their advantage. The change in the time of the departure of the mixed train in the afternoon from Summerside is in my opinion economic for the company to adopt in connection with the general handling from Borden in getting the

equipment there for the afternoon trip of the boat from the mainland. I might say in this connection that the proposals were discussed with Mr. Barker, Superintendent of Transportation, at Moncton on Monday evening the 20th, and a letter from him, delivered yesterday at St. John, provides for a change in the eastbound morning train from Summerside to Charlottetown that I do not feel should be made, hence my proposal as outlined above in connection with the afternoon trip.

If the recommendations above outlined are approved I would like authority to wire Mr. Barker the details of the service which the Board will authorize so that he may get ahead with his time table arrangements, the same to be followed by a copy of this memo. to the company, and such notice as the Board desires to give to the complainants. Both the company and the complainants to be advised that the matter of summer service from points west of Summerside, so as to make connection with the first trip of the ferry, will be taken up and dealt with in time for the spring change of time table.

GEO. SPENCER,
Chief Operating Officer.

PROPOSED SCHEDULES

No. 4—

Leave Tignish 7.45 a.m., arrive Summerside 10.50 a.m.

Leave Summerside 10.55 a.m., arrive Tormentine 10.00 a.m.

Leave Emerald Junction 12.10 p.m., arrive Charlottetown 1.55 p.m.

New train—

Leave Sackville 7.15 a.m., arrive Emerald Junction 12 noon.

Leave Borden 11.20 a.m., arrive Emerald Junction 12 noon.

Leave Emerald Junction 12.10 p.m., arrive Summerside 1.30 p.m.

No. 212—

Leave Summerside 1.45 p.m., arrive Borden 3.35 p.m.

No. 44—

Leave Borden 4.05 p.m., arrive Charlottetown 6.20 p.m., as shown on last winter's time table, connecting at Emerald Junction with train No. 3 for Summerside and points west.

No. 212, Mixed—

Leave Tignish 11.00 a.m., arrive Summerside 4.30 p.m.

ORDER No. 35722

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," for a further extension of time until January 31, 1925, within which the existing station limits rule (Special Instruction "E") may be continued in the working time tables.

File No. 4135.26.2

TUESDAY, the 28th day of October, A.D. 1924.

S. J. McLEAN, Assistant Chief Commissioner.

A. C. BOYCE, K.C., Commissioner.

Upon reading what is filed in support of the application, and its appearing that extended time is necessary for the filing of the applicant company's by-law, and the consideration of the same by the Governor in Council,—

The Board orders: That the time within which the necessary changes and instructions to employees of the applicant company, to observe the Uniform Code of Rules for Canadian Railways approved by General Order No. 42, dated July 12, 1909, may become effective, be, and it is hereby, further extended until January 31, 1925.

S. J. McLEAN,
Assistant Chief Commissioner.

* ORDER No. 35723

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," for permission to close its agency station at Fort Fraser, in the Province of British Columbia.

File No. 18970

TUESDAY, the 28th day of October, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the Fort Fraser Board of Trade; and upon the report and recommendation of its Chief Operating Officer,—

The Board orders: That the applicant company be, and it is hereby, granted leave, until further order, to remove its station agent at Fort Fraser, in the province of British Columbia, subject to and upon the condition that a caretaker be appointed to see that the station building is kept clean, and when necessary heated and lighted, for accommodation of passengers on the arrival and departure of trains, and to care for L.C.L. freight and express shipments.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35735

In the matter of the Order of the Board No. 35457, dated August 7, 1924, relating to switching charges at Halifax.

File No. 21700.11

MONDAY, the 27th day of October, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been filed on behalf of the railway companies, and upon the report and recommendation of its Chief Traffic Officer,—
The Board orders as follows:—

1. That the charge of the Canadian National Railway Company for switching carload traffic (ex water or for furtherance by water) to or from the Dominion Atlantic Railway, between Halifax Yards and Deepwater Terminals, shall be one cent per one hundred pounds, subject to the minimum weight of the line carrier's tariff, but in no case less than—

\$3 per car on 7th, 8th, and 10th class traffic (as per Canadian Freight Classification).

\$5 per car on all other traffic.

2. That the Dominion Atlantic Railway Company absorb not less than one-half of the charge, as prescribed by section 1 hereof; tariffs to provide accordingly.

3. That upon publication by the Canadian National Railway Company of the same switching charge as prescribed by section 1 hereof, on the same traffic, between Halifax Yards and Richmond and Ocean Terminals, the Dominion Atlantic Railway Company make the same absorption as prescribed in section 2 hereof and amend its tariff schedules accordingly.

4. That the said Order No. 35457, dated August 7, 1924, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

*Dangerous Practices of Motorists, Drivers of Other Vehicles, and of Pedestrians,
at Railway Crossings*

Files Nos. 45.8.1, 45.8.2 and 45.8.3

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines, from March 25, 1924, to October 31, 1924, show 49 cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Toronto, Hamilton and Buffalo lines, from April 30, 1924, to October 31, 1924, show 3 cases.

The Canadian Pacific Railway lines, from October 16, 1923, to September 30, 1924, show 554 cases.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Mar. 25.....		Thornlea, passing track, Mileage 16-9, Bala Subd.		Motor truck attempted to turn around on crossing; stalled with front portion of truck foul of main track.
April 12.....	6.40 a.m...	Devonshire Road, Walkerville.	C. 5/170, Ont...	Ran under gate.
April 21.....	8.30 p.m...	Queen St. East, Toronto.	12-178.....	Reckless driving.
May 1.....	3.25 p.m...	Laframboise St., St. Hyacinthe, P.Q.	C. 2736.....	Disregarded stop signal; drove over crossing.
May 20.....		Cathelene St. crossing, Sudbury, Ont.	235-550.....	Inexperienced auto driver ran into train crossing track.
May 26.....	9.25 a.m...	Walton St., Port Hope	61-990 Ont.....	Disregarded stop signal.
June 2.....	4.05 p.m...	Devonshire Road, Walkerville.	153-820.....	Drove under gates while being lowered.
June 27.....	9.00 a.m...	Keele St., West Toronto.	62-660.....	Did not heed signals.
July 15.....		Melbourne crossing, Richmond, P.Q.	49911.....	Did not heed signals; rushed across crossing.
July 18.....	6.15 p.m...	East Main St., Welland, Ont.	96-350.....	Drove into lowered gates.
July 30.....	5.00 p.m... D.L.T.	Laurier Ave., Levis, P.Q.	1-218-283 New York.	Drove around north gate; hind part of car stalled on crossing.
Aug. 11.....		Yonge St. crossing, south of Aurora, Ont.	45-959.....	Disregarded signals; crossed in front of engine.
Aug. 11.....	1.10 p.m...	Keele St. crossing, Toronto.	3-476.....	Did not heed stop signal; drove on and stalled on crossing.
Sept. 2.....	11.55 a.m... S.T.	Booth St., cor. Britannia St., Ottawa.	209-583 Ont....	Did not heed stop signals; crossed in front of engine.
Sept. 2.....	3.25 p.m... D.S.T.	Booth St., cor. Britannia St., Ottawa.	205-380 Ont....	Did not heed stop signals; crossed in front of engine.
Sept. 2.....	3.35 p.m... D.S.T.	Booth St., cor. Britannia St., Ottawa.	206-760 Ont....	Did not heed stop signals; crossed in front of engine.
Sept. 4.....	3.45 p.m... D.S.T.	Booth St., cor. Britannia St., Ottawa.	210-561 Ont....	Did not heed stop signals; crossed in front of engine.
Sept. 4.....	4.00 p.m...	Booth St., cor. Britannia St., Ottawa.	209-553 Ont....	Did not heed stop signals; crossed in front of engine.
Sept. 4.....	3.55 p.m... D.S.T.	Booth St., cor. Britannia St., Ottawa.	National Bread Co., Hull.	Did not heed stop signals; crossed in front of engine.
Sept. 4.....	9.50 a.m...	Booth St. crossing, Ottawa.	39895 Que.....	Ran by the flag.
Sept. 10.....	3.10 p.m...	Booth St., cor. Britannia St., Ottawa.	206-571 Ont....	Did not heed stop signals; crossed in front of engine.
Sept. 13.....	9.08 a.m...	Walton St., Port Hope	247-338 Ont....	Driver of auto did not heed stop signals and crossed in front of engine.
Sept. 18.....	2.10 p.m...	Queen St. crossing, Ottawa.	279-453.....	Ran into east gate breaking part of it; gates down; bell ringing.
Sept. 20.....	3.25 p.m...	Booth St., cor. Britannia St., Ottawa.	208-558 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 20.....	3.20 p.m...	Booth St., cor. Britannia St., Ottawa.	204-495 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 22.....	4.15 p.m...	Booth St., cor. Britannia St., Ottawa.	210-450 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 22.....	4.10 p.m...	Booth St., cor. Britannia St., Ottawa.	212-709 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 22.....	4.15 p.m...	Booth St., cor. Britannia St., Ottawa.	212-602 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 22.....	3.15 p.m...	Booth St., cor. Britannia St., Ottawa.	277-481 Ont....	Did not heed stop signals; crossed in front of engine.
Sept. 22.....	3.25 p.m...	Booth St., cor. Britannia St., Ottawa.	205-158 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 23.....		Queen St., Ottawa.	Milk wagon....	Gates up. Milk wagon struck one side of gate damaging iron part of gate, also stand which gate stands on.
Sept. 24.....	4.15 p.m...	Booth St., cor. Britannia St., Ottawa.	256-660 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 25.....	3.55 p.m...	Booth St., cor. Britannia St., Ottawa.	C-22-405 Ont. Truck.	Did not heed stop signal; crossed in front of engine.
Sept. 25.....	3.55 p.m...	Booth St., cor. Britannia St., Ottawa.	210-140 Ont....	Did not heed stop signal; crossed in front of engine.
sept. 25.....	3.55 p.m...	Booth St., cor. Britannia St., Ottawa.	204-545 Ont....	Did not heed stop signal; crossed in front of engine.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Sept. 25.....	3.55 p.m...	Booth St., cor. Britannia St., Ottawa.	208-020 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 25.....	3.45 p.m...	Booth St., cor. Britannia St., Ottawa.	212-072 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 25.....	2.50 p.m...	Booth St., cor. Britannia St., Ottawa.	211-311 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 30.....	9.55 a.m...	Booth St., cor. Britannia St., Ottawa.	206-338 Ont....	Did not heed stop signal; crossed in front of engine.
Sept. 30.....	2.50 p.m...	Booth St., cor. Britannia St., Ottawa.	C-81-060 Ont...	Did not heed stop signal; crossed in front of engine.
Oct. 2.....	3.00 p.m...	Booth St., cor. Britannia St., Ottawa.	281-270 Ont....	Did not heed stop signal; crossed in front of engine.
Oct. 3.....	10.00 a.m...	East Main St., Welland, Ont.	96-268.....	Driving too fast; unable to stop; skidded 14 yards with brakes on.
Oct. 9.....	3.05 p.m...	Booth St., cor. Britannia St., Ottawa.	205-948 Ont....	Did not heed stop signal; crossed in front of engine.
Oct. 9.....	3.05 p.m...	Booth St., cor. Britannia St., Ottawa.	C-22-314 Ont...	Did not heed stop signal; crossed in front of engine.
Oct. 9.....	3.05 p.m...	Booth St., cor. Britannia St., Ottawa.	208-225 Ont....	Did not heed stop signal; crossed in front of engine.
Oct. 9.....	4.45 p.m...	Booth St., cor. Britannia St., Ottawa.	207-811 Ont....	Did not heed stop signal; crossed in front of engine.
Oct. 9.....	4.45 p.m...	Booth St., cor. Britannia St., Ottawa.	207-830 Ont....	Did not heed stop signal; crossed in front of engine.
Oct. 11.....	11.30 p.m...	Queen St., Chatham, Ont.	146-439.....	Cranked auto while in gear, causing it to jump ahead and break gate.
Oct. 25.....	9.50 a.m...	Bowes St., Parry Sound, Ont.	C-5-852.....	Did not see train backing into siding until front wheels of auto were over the rail; motor stalled.

TORONTO, HAMILTON AND BUFFALO LINES

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
April 30.....	3.30 p.m...	Main St. and Gage Ave., Hamilton.	75-550.....	Did not heed stop signals; auto stalled on diamond.
May 9.....	11.45 p.m...	James St., Hamilton.	.....	Broke southeast gate.
Oct. 6.....	8.40 p.m...	James St., Hamilton.	126-270.....	Drove through crossing gates; broke one and twisted another.

CANADIAN PACIFIC RAILWAY LINES

Date	Time	Street	License No. of Auto	Dangerous Practice
1923				
Oct. 16.....	2.30 p.m...	St. Hubert St., Montreal.	8259.....	Ran through gates.
Oct. 24.....	2.00 p.m...	Chelsea Road.....	Ont. 73-645.....	Ran through gates.
Oct. 26.....	9.00 a.m...	Peter and Wellington, Toronto.	40-118.....	Not heeding stop signal.
Oct. 26.....	9.15 a.m...	Peter and Wellington, Toronto.	16-280.....	Not heeding stop signal.
Oct. 26.....	5.50 p.m...	Peter and Wellington, Toronto.	31-592.....	Not heeding stop signal.
Oct. 27.....	12.40 p.m...	Peter and Wellington, Toronto.	19.....	Not heeding stop signal.
Oct. 27.....	5.40 p.m...	Peter and Wellington, Toronto.	C6-727.....	Not heeding stop signal.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Oct. 27.....		Douglas Ave. crossing		Not heeding stop signal.
Oct. 29.....	7 a.m. to 7 a.m.	Main St., Farnham...	28 pedestrians..	Walked under gate.
Oct. 29.....	7 a.m. to 7 a.m.	St. Louis St., Farnham	40 pedestrians..	Walked under gate.
Oct. 30.....	12.30 p.m...	Cherry St., Toronto..	36-393.....	Not heeding stop signal.
Oct. 30.....	1.10 p.m...	Peter and Wellington, Toronto.	C3-472.....	Not heeding stop signal.
Oct. 30.....	10.05 p.m...	Richmond St., London.	-63-501.....	Ran through gates.
Oct. 30.....		Main St., Farnham...	1 pedestrian....	Walked under gate.
Oct. 30.....		Main St., Farnham...		Ran through gates.
Oct. 30.....		St. Louis St., Farnham.	33 pedestrians..	Walked under gate.
Oct. 30.....	12.30 p.m...	Cherry St., Toronto..	36393.....	Disregarded stop signal.
Oct. 31.....		St. Louis St., Farnham.	96 pedestrians..	Walked under gate.
Oct. 31.....		Main St., Farnham...	14 pedestrians..	Walked under gate.
Nov. 1.....		Main St., Farnham...	11 pedestrians..	Walked under gate.
Nov. 1.....		St. Louis St., Farnham.	35 pedestrians..	Walked under gate.
Nov. 1.....		Royce Ave., Toronto.	112 pedestrians..	Walked under gate.
Nov. 1.....		Royce Ave., Toronto.	10 bicycles....	Pushed under gate.
Nov. 1.....	7.37 a.m...	Bucke Station.....	1 pedestrian....	Disregarded bell.
Nov. 1.....	1.35 p.m...	Bucke Station.....	2 pedestrians....	Disregarded bell.
Nov. 2.....		Main St., Farnham...	13 pedestrians..	Walked under gate.
Nov. 2.....		St. Louis St., Farnham.	29 pedestrians..	Walked under gate.
Nov. 2.....		Royce Ave., Toronto.	123 pedestrians..	Walked under gate.
Nov. 2.....		Royce Ave., Toronto.	8 bicycles....	Pushed under gate.
Nov. 2.....	8.45 a.m...	Peter and Wellington, Toronto.	Dom.Ex.wagon. B-243.....	Disregarded stop signal.
Nov. 2.....	9.00 a.m...	Peter and Wellington, Toronto.	3-362.....	Disregarded stop signal.
Nov. 2.....	11.20 a.m...	Peter and Wellington, Toronto.	40-355.....	Disregarded stop signal.
Nov. 2.....		Bonaventure St., Three Rivers.	384 pedestrians..	Walked under gate.
Nov. 2.....	4.40 p.m...	Bucke Station.....	1 pedestrian....	Disregarded bell.
Nov. 3.....		Main St., Farnham...	39 pedestrians..	Walked under gate.
Nov. 3.....		St. Louis St., Farnham.	47 pedestrians..	Walked under gate.
Nov. 3.....		Royce Ave., Toronto.	99 pedestrians..	Walked under gate.
Nov. 3.....		Royce Ave., Toronto.	4 bicycles....	Pushed under gate.
Nov. 3.....	1.00 p.m...	Peter and Wellington, Toronto.	12-865.....	Disregarded stop signal.
Nov. 3.....	7.50 a.m...	Eastern Ave., Toronto.	236-671.....	Disregarded stop signal.
Nov. 3.....	12.07 p.m...	Osler Ave., Toronto...	1 pedestrian....	Walked under gate.
Nov. 3.....	7.30 p.m...	Chelsea Road, Ottawa	Ont. 73-645...	Ran through gates.
Nov. 3.....	10.00 a.m...	Chelsea Road, Ottawa	Ont. C-7867...	Ran through gates.
Nov. 3.....		Bonaventure St., Three Rivers.	394 pedestrians..	Walked under gate.
Nov. 4.....		Main St., Farnham...	31 pedestrians..	Walked under gate.
Nov. 4.....		St. Louis St., Farnham.	22 pedestrians..	Walked under gate.
Nov. 4.....		Royce Ave., Toronto.	142 pedestrians..	Walked under gate.
Nov. 4.....		Royce Ave., Toronto.	9 bicycles....	Pushed under bridge.
Nov. 4.....		St. Maurice St., Three Rivers.	198 pedestrians..	Walked under gate.
Nov. 4.....		Bonaventure St., Three Rivers.	447 pedestrians..	Walked under gate.
Nov. 4.....	1.35 p.m...	Bucke Station.....	1 pedestrian....	Disregarded bell.
Nov. 5.....		Main St., Farnham...	42 pedestrians..	Passed under gate.
Nov. 5.....		St. Louis St., Farnham.	38 pedestrians..	Passed under gate.
Nov. 5.....		Royce Ave., Toronto.	293 pedestrians..	Passed under gate.
Nov. 5.....		Royce Ave., Toronto.	11 bicycles....	Passed under gate.
Nov. 5.....	2.00 p.m...	Osler Ave., Toronto..	C-9697.....	Ran through gates.
Nov. 5.....		Bonaventure St., Three Rivers.	430 pedestrians..	Passed under gate.
Nov. 5.....	7.37 a.m...	Bucke Station.....	1 pedestrian....	Passed under gate.
Nov. 6.....		Main St., Farnham...	18 pedestrians..	Passed under gate.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Nov. 6.....		St. Louis St., Farnham.	42 pedestrians..	Passed under gate.
Nov. 6.....		Royce Ave., Toronto.	159 pedestrians..	Passed under gate.
Nov. 6.....		Royce Ave., Toronto.	12 bicycles.....	Passed under gate.
Nov. 6.....	7.00 p.m.	Peter and Wellington, Toronto	237-014.....	Disregarded stop signal.
Nov. 6.....		St. Maurice St., Three Rivers.	319 pedestrians..	Passed under gate.
Nov. 7.....		Main St., Farnham...	25 pedestrians..	Passed under gate.
Nov. 7.....		St. Louis St., Farnham.	40 pedestrians..	Passed under gate.
Nov. 7.....		Royce Ave., Toronto.	126 pedestrians..	Passed under gate.
Nov. 7.....		Royce Ave., Toronto.	3 bicycles.....	Passed under gate.
Nov. 7.....	9.45 a.m.	Peter and Wellington, Toronto.	C8-575.....	Disregarded stop signal.
Nov. 7.....		Bonaventure St., Three Rivers.	355 pedestrians..	Passed under gate.
Nov. 7.....	4.40 p.m.	Bucke Station.....	1 pedestrian...	Passed under gate.
Nov. 8.....		Main St., Farnham...	38 pedestrians..	Passed under gate.
Nov. 8.....		St. Louis St., Farnham.	49 pedestrians..	Passed under gate.
Nov. 8.....		Royce Ave., Toronto.	192 pedestrians..	Passed under gate.
Nov. 8.....		Royce Ave., Toronto.	5 bicycles.....	Passed under gate.
Nov. 8.....	10.25 p.m.	Peter and Wellington, Toronto.	236-570.....	Disregarded stop signal.
Nov. 8.....		Bonaventure St.....	451 pedestrians..	Passed under gate.
Nov. 9.....		Main St., Farnham...	38 pedestrians..	Passed under gate.
Nov. 9.....		Main St., Farnham...	1 auto.....	Drove around gates.
Nov. 9.....		St. Louis St., Farnham.	43 pedestrians..	Passed under gate.
Nov. 9.....		Royce Ave., Toronto.	207 pedestrians..	Passed under gate.
Nov. 9.....		Royce Ave., Toronto.	12 bicycles....	Passed under gate.
Nov. 9.....	8.30 a.m.	Peter and Wellington, Toronto.	236-570.....	Disregarded stop signal.
Nov. 9.....	12.51 p.m.	Peter and Wellington, Toronto.	C-570.....	Disregarded stop signal.
Nov. 9.....	1.00 p.m.	Peter and Wellington, Toronto.	C.N. wagon 47.	Disregarded stop signal.
Nov. 9.....	10.40 p.m.	Peter and Wellington, Toronto.	14-109.....	Disregarded stop signal.
Nov. 9.....		St. Maurice St., Three Rivers.	309 pedestrians..	Passed under gate.
Nov. 9.....	4.40 p.m.	Bucke Station.....	1 pedestrian...	Passed under gate.
Nov. 10.....		Main St., Farnham...	32 pedestrians..	Passed under gate.
Nov. 10.....		St. Louis St., Farnham.	41 pedestrians..	Passed under gate.
Nov. 10.....		Royce Ave., Toronto.	400 pedestrians..	Passed under gate.
Nov. 10.....		Royce Ave., Toronto.	10 bicycles....	Passed under gate.
Nov. 10.....		Royce Ave., Toronto.	868491.....	Passed around gate.
Nov. 10.....	7.15 p.m.	Peter and Wellington, Toronto.	47-306.....	Disregarded stop signal.
Nov. 10.....	10.48 a.m.	Peter and Wellington, Toronto.	3-462.....	Disregarded stop signal.
Nov. 10.....	12.40 p.m.	Peter and Wellington, Toronto.	C-191.....	Disregarded stop signal.
Nov. 10.....	12.55 p.m.	Peter and Wellington, Toronto.	37-731.....	Disregarded stop signal.
Nov. 10.....	3.15 a.m.	Papineau Ave., Montreal.	68-147.....	Ran through gates.
Nov. 10.....		Bonaventure St., Three Rivers.	325 pedestrians..	Passed under gate.
Nov. 10.....	7.05 p.m.	Waterloo St., London.	63-501.....	Ran through gate.
Nov. 10.....	9.00 a.m.	Bucke Station.....	2 pedestrians..	Passed under gate.
Nov. 11.....		Main St., Farnham...	31 pedestrians..	Passed under gate.
Nov. 11.....		St. Louis St., Farnham.	29 pedestrians..	Passed under gate.
Nov. 11.....		Royce Ave., Toronto	111 pedestrians..	Passed under gate.
Nov. 11.....		Bonaventure St., Three Rivers.	457 pedestrians..	Passed under gate.
Nov. 12.....		Main St., Farnham...	55 pedestrians..	Passed under gate.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Nov. 12.....		St. Louis St., Farnham.	47 pedestrians.	Passed under gate.
Nov. 12.....		Royce Ave., Toronto.	109 pedestrians..	Passed under gate.
Nov. 12.....	10.30 a.m..	Peter and Wellington, Toronto.	9-422.....	Disregarded stop signal.
Nov. 12.....		St. Maurice St., Three Rivers.	145 pedestrians..	Passed under gate.
Nov. 12.....		Bonaventure St., Three Rivers.	360 pedestrians..	Passed under gate.
Nov. 13.....		Main St., Farnham...	38 pedestrians..	Passed under gate.
Nov. 13.....		St. Louis St., Farnham.	34 pedestrians..	Passed under gate.
Nov. 13.....		Royce Ave., Toronto.	218 pedestrians..	Passed under gate.
Nov. 13.....	6.15 p.m..	Chelsea Road, Ottawa	80-207.....	Ran through gates.
Nov. 13.....		St. Maurice St., Three Rivers.	337 pedestrians..	Passed under gate.
Nov. 13.....		Bucke Station.....	5 pedestrians..	Passed under gate.
Nov. 14.....		Main St., Farnham...	46 pedestrians..	Passed under gate.
Nov. 14.....		St. Louis St., Farnham.	46 pedestrians..	Passed under gate.
Nov. 14.....		Royce Ave., Toronto.	237 pedestrians..	Passed under gate.
Nov. 14.....		Royce Ave., Toronto.	3 bicycles.....	Passed under gate.
Nov. 14.....	7.45 a.m..	Peter and Wellington, Toronto.	C-5-488.....	Disregarded stop signal.
Nov. 14.....	2.20 p.m..	Peter and Wellington, Toronto.	26-£09.....	Disregarded stop signal.
Nov. 14.....	6.10 p.m..	Peter and Wellington, Toronto.	233-385.....	Disregarded stop signal.
Nov. 14.....	7.55 p.m..	Peter and Wellington, Toronto.	1-682.....	Disregarded stop signal.
Nov. 14.....	1.35 p.m..	Bucke Station.....	Vehicle.....	Disregarded stop signal.
Nov. 15.....		Main St., Farnham...	46 pedestrians..	Passed under gate.
Nov. 15.....		St. Louis St., Farnham	37 pedestrians..	Passed under gate.
Nov. 15.....		Royce Ave., Toronto.	202 pedestrians..	Passed under gate.
Nov. 15.....		Royce Ave., Toronto.	8 bicycles.....	Passed under gate.
Nov. 15.....		Royce Ave., Toronto.	38-145.....	Passed around gate.
Nov. 15.....		Royce Ave., Toronto.	235-179.....	Passed around gate.
Nov. 15.....	2.17 p.m..	Peter and Wellington, Toronto.	C1-685.....	Disregarded stop signal.
Nov. 15.....	7.10 p.m..	Peter and Wellington, Toronto.	270-016.....	Disregarded stop signal.
Nov. 15.....	2.25 p.m..	Moore Xing Mil, 10 Belleville Sd.	Ont., 199473.....	Crossed track within 50 feet of train.
Nov. 15.....		Bonaventure St., Three Rivers.	421 pedestrians..	Passed under gate.
Nov. 15.....	2.20 p.m..	Douglas Avenue crossing.	6859.....	Stalled on crossing.
Nov. 15.....	4.30 p.m..	Douglas Avenue crossing.	1 bicycle.....	Passed under gate.
Nov. 16.....		Main St., Farnham...	44 pedestrians..	Passed under gate.
Nov. 16.....		St. Louis St., Farnham.	39 pedestrians..	Passed under gate.
Nov. 16.....		Royce Ave., Toronto.	145 pedestrians..	Passed under gate.
Nov. 16.....		Royce Ave., Toronto.	9 bicycles.....	Passed under gate.
Nov. 16.....		Royce Ave., Toronto.	7-873.....	Passed around gate.
Nov. 16.....		Royce Ave., Toronto.	5-825.....	Passed around gate.
Nov. 16.....	11.59 a.m..	Peter and Wellington, Toronto.	C9-207.....	Disregarded stop signal.
Nov. 16.....	2.55 p.m..	Peter and Wellington, Toronto.	41-021.....	Disregarded stop signal.
Nov. 16.....		Bonaventure St., Three Rivers.	304 pedestrians..	Passed under gate.
Nov. 17.....		Main St., Farnham...	43 pedestrians..	Passed under gate.
Nov. 17.....		St. Louis St., Farnham.	38 pedestrians..	Passed under gate.
Nov. 17.....		Royce Ave., Toronto.	90 pedestrians..	Passed under gate.
Nov. 17.....		Royce Ave., Toronto.	12 bicycles....	Passed under gate.
Nov. 17.....		Royce Ave., Toronto.	25-709.....	Passed around gate.
Nov. 17.....	10.15 a.m..	Peter and Wellington, Toronto.	C-8729.....	Disregarded stop signal.
Nov. 17.....	1.01 p.m..	Peter and Wellington, Toronto.	234-455.....	Disregarded stop signal.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Nov. 17.....	1.50 p.m...	Peter and Wellington, Toronto.	2-764.....	Disregarded stop signal.
Nov. 17.....		St. Maurice St., Three Rivers.	326 pedestrians.	Passed under gate.
Nov. 17.....	5.30 p.m....	Douglas Ave. Crossing	1 pedestrian.	Crossed in front of moving engine.
Nov. 17.....	1.10 p.m....	Bucke Station.....	1 pedestrian..	Disregarded bell.
Nov. 18.....		Main St., Farnham...	58 pedestrians.	Passed under gate.
Nov. 18.....		St. Louis St., Farn- ham.	25 pedestrians.	Passed under gate.
Nov. 18.....		Royce Ave., Toronto.	103 pedestrians.	Passed under gate.
Nov. 18.....		Royce Ave., Toronto.	10 bicycles....	Passed under gate.
Nov. 18.....		Royce Ave., Toronto.	22-579.....	Passed around gate.
Nov. 18.....	2.25 a.m...	Bartlett Ave., Toron- to.	233-893.....	Ran into gates.
Nov. 18.....		Bonaventure St., Three Rivers.	318 pedestrians.	Passed under gate.
Nov. 19.....		Main St., Farnham...	58 pedestrians.	Passed under gate.
Nov. 19.....		St. Louis St., Farn- ham.	43 pedestrians.	Passed under gate.
Nov. 19.....		Royce Ave., Toronto.	124 pedestrians.	Passed under gate.
Nov. 19.....		Royce Ave., Toronto.	1 bicycle....	Passed under gate.
Nov. 19.....		Royce Ave., Toronto.	1-686.....	Passed around gate.
Nov. 19.....	10.20 p.m...	Peter and Wellington, Toronto.	17-856.....	Disregarded stop signal.
Nov. 19.....	11.30 p.m...	Peter and Wellington, Toronto.	C8-584.....	Disregarded stop signal.
Nov. 19.....	11.30 p.m...	Peter and Wellington, Toronto.	29-564.....	Disregarded stop signal.
Nov. 19.....		Crown St., Quebec....	32 pedestrians.	Passed under gate.
Nov. 19.....		St. Maurice St., Three Rivers.	370 pedestrians.	Passed under gate.
Nov. 19.....	7.37 a.m...	Bucke Station.....	1 pedestrian..	Disregarded bell.
Nov. 19.....	3.00 p.m...	Bucke Station.....	1 bicycle....	Disregarded bell.
Nov. 20.....		Main St., Farnham...	54 pedestrians.	Passed under gate.
Nov. 20.....		St. Louis St., Farnham	48 pedestrians.	Passed under gate.
Nov. 20.....		Royce Ave., Toronto.	120 pedestrians.	Passed under gate.
Nov. 20.....		Royce Ave., Toronto.	5 bicycles....	Passed under gate.
Nov. 20.....		Crown St., Quebec....	20 pedestrians.	Passed under gate.
Nov. 20.....		St. Maurice St., Three Rivers.	261 pedestrians.	Passed under gate.
Nov. 20.....	1.35 p.m...	Bucke Station.....	1 pedestrian..	Disregarded bell.
Nov. 21.....		Main St., Farnham....	61 pedestrians.	Passed under gate.
Nov. 21.....		St. Louis St., Farn- ham.	40 pedestrians.	Passed under gate.
Nov. 21.....		Royce Ave., Toronto.	129 pedestrians.	Passed under gate.
Nov. 21.....	8.50 a.m...	Peter and Wellington..	233-643.....	Disregarded stop signal.
Nov. 21.....		Crown St., Quebec....	13 pedestrians.	Passed under gate.
Nov. 21.....		Bonaventure St., Three Rivers.	265 pedestrians.	Passed under gate.
Nov. 21.....	12.30 p.m...	Jackman Crossing....	1 pedestrian..	Disregarded stop signal.
Nov. 21.....	4.40 p.m...	Bucke Station.....	1 pedestrian..	Disregarded stop signal.
Nov. 22.....		Main St., Farnham....	46 pedestrians.	Passed under gate.
Nov. 22.....		St. Louis St., Farn- ham.	40 pedestrians..	Passed under gate.
Nov. 22.....		Royce Ave., Toronto.	105 pedestrians.	Passed under gate.
Nov. 22.....		Royce Ave., Toronto.	4 bicycles....	Passed under gate.
Nov. 22.....	1.50 p.m...	Peter and Wellington, Toronto.	238-976.....	Disregarded stop signal.
Nov. 22.....	10.00 a.m...	Peter and Wellington, Toronto.	9675.....	Disregarded stop signal.
Nov. 22.....		Crown St., Quebec....	14 pedestrians.	Passed under gate.
Nov. 22.....		St. Maurice St., Three Rivers.	364 pedestrians.	Passed under gate.
Nov. 22.....	7.37 a.m...	Bucke Station.....	1 pedestrian..	Disregarded bell.
Nov. 23.....		Main St., Farnham....	35 pedestrian..	Passed under gate.
Nov. 23.....		St. Louis St., Farn- ham.	46 pedestrians.	Passed under gate.
Nov. 23.....		Royce Ave., Toronto.	135 pedestrians.	Passed under gate.
Nov. 23.....		Royce Ave., Toronto.	6 bicycles....	Passed under gate.
Nov. 23.....	11.35 a.m...	Peter and Wellington, Toronto.	1691.....	Disregarded stop signal.
Nov. 23.....	1.27 p.m...	Peter and Wellington, Toronto.	49-491.....	Disregarded stop signal.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Nov. 23...	1.50 p.m.	Peter and Wellington, Toronto.	45-521.....	Disregarded stop signal.
Nov. 23.....		Crown St., Quebec....	15 pedestrians.	Passed under gate.
Nov. 23.....		St. Maurice St., Three Rivers.	284 pedestrians.	Passed under gate.
Nov. 24.....		Main St., Farnham....	39 pedestrians.	Passed under gate.
Nov. 24.....		St. Louis St., Farn- ham.	41 pedestrians.	Passed under gate.
Nov. 24.....		Royce Ave., Toronto.	114 pedestrians.	Passed under gate.
Nov. 24.....		Royce Ave., Toronto.	4 bicycles....	Passed under gate.
Nov. 24.....	8.20 p.m.	Peter and Wellington, Toronto.	6-949.....	Disregarded stop signal.
Nov. 24.....		Bonaventure St., Three Rivers.	304 pedestrians.	Passed under gate.
Nov. 24.....	7.37 a.m.	Bucke Station.....	1 pedestrian..	Disregarded stop signal.
Nov. 25.....		Main St., Farnham....	37 pedestrians.	Passed under gate.
Nov. 25.....		St. Louis St., Farn- ham.	38 pedestrians.	Passed under gate.
Nov. 25.....		Royce Ave., Toronto.	102 pedestrians.	Passed under gate.
Nov. 25.....		Royce Ave., Toronto.	9 bicycles....	Passed under gate.
Nov. 25.....		St. Maurice St., Three Rivers.	196 pedestrians.	Passed under gate.
Nov. 25.....		Bucke Station.....	2 pedestrians.	Disregarded stop signal.
Nov. 26.....		Main St., Farnham....	49 pedestrians.	Passed under gate.
Nov. 26.....		St. Louis St., Farn- ham.	47 pedestrians.	Passed under gate.
Nov. 26.....		Royce Ave., Toronto.	149 pedestrians.	Passed under gate.
Nov. 26.....		Crown St., Quebec....	13 pedestrians.	Passed under gate.
Nov. 26.....		Bonaventure St., Three Rivers.	324 pedestrians.	Passed under gate.
Nov. 26.....	10.48 a.m.	Bucke Station.....	1 pedestrian..	Disregarded stop signal.
Nov. 27.....		Main St., Farnham....	54 pedestrians.	Passed under gate.
Nov. 27.....		St. Louis St., Farn- ham.	51 pedestrians.	Passed under gate.
Nov. 27.....		Royce Ave., Toronto.	109 pedestrians.	Passed under gate.
Nov. 27.....		Royce Ave., Toronto.	4 bicycles....	Passed under gate.
Nov. 27.....	9.40 a.m.	Peter and Wellington, Toronto.	35-853.....	Disregarded stop signal.
Nov. 27.....		Crown St., Quebec....	11 pedestrians.	Passed under gate.
Nov. 27.....		St. Maurice St., Three Rivers.	390 pedestrians.	Passed under gate.
Nov. 28.....		Main St., Farnham....	36 pedestrians.	Passed under gate.
Nov. 28.....		St. Louis St., Farn- ham.	46 pedestrians.	Passed under gate.
Nov. 28.....		Royce Ave., Toronto.	164 pedestrians.	Passed under gate.
Nov. 28.....		Royce Ave., Toronto.	9 bicycles....	Passed under gate.
Nov. 28.....	8.33 a.m.	Peter and Wellington, Toronto.	232-721.....	Disregarded stop signal.
Nov. 28.....	9.35 a.m.	Peter and Wellington, Toronto.	250-110.....	Disregarded stop signal.
Nov. 28.....	12.50 p.m.	Peter and Wellington, Toronto.	1-220.....	Disregarded stop signal.
Nov. 28.....		St. Maurice St., Three Rivers.	239 pedestrians.	Passed under gate.
Nov. 28.....	1.35 p.m.	Bucke Station.....	1 bicycle....	Passed under gate.
Nov. 29.....	7.25 a.m.	Peter and Wellington, Toronto.	45-521.....	Disregarded stop signal.
Nov. 29.....		Main St., Farnham....	33 pedestrians.	Passed under gate.
Nov. 29.....		St. Louis St., Farn- ham.	41 pedestrians.	Passed under gate.
Nov. 29.....		Royce Ave., Toronto.	148 pedestrians.	Passed under gate.
Nov. 29.....		Royce Ave., Toronto.	6 bicycles....	Passed under gate.
Nov. 29.....	10.35 a.m.	Peter and Wellington, Toronto.	C5-299.....	Disregarded stop signal.
Nov. 29.....	9.25 a.m.	Papineau Ave., Mont- real.	C-2137.....	Ran through gates.
Nov. 29.....		Bonaventure St., Three Rivers.	112 pedestrians.	Passed under gate.
Nov. 30.....		Main St., Farnham....	34 pedestrians.	Passed under gate.
Nov. 30.....		St. Louis St., Farn- ham.	32 pedestrians.	Passed under gate.
Nov. 30.....		Royce Ave., Toronto.	123 pedestrians.	Passed under gate.
Nov. 30.....	9.20 a.m.	Peter and Wellington, Toronto.	C1-066.....	Disregarded stop signal.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1.24				
Nov. 30.....	11.20 a.m...	Peter and Wellington, Toronto.	C1-766.....	Disregarded stop signal.
Nov. 30.....		St. Maurice St., Three Rivers.	262 pedestrians..	Passed under gate.
Nov. 30.....	11.05 a.m...	Bucke Station.....	1 pedestrian..	Disregarded bell.
Dec. 1.....		Main St., Farnham...	22 pedestrians..	Passed under gate.
Dec. 1.....		St. Louis St., Farn- ham.	35 pedestrians..	Passed under gate.
Dec. 1.....		Royce Ave., Toronto.	117 pedestrians..	Passed under gate.
Dec. 1.....		Royce Ave., Toronto.	4 bicycles.....	Passed under gate.
Dec. 1.....	9.15 a.m...	Peter and Wellington, Toronto.	46-917.....	Disregarded stop signal.
Dec. 1.....	9.15 a.m...	Peter and Wellington, Toronto.	20-230.....	Disregarded stop signal.
Dec. 1.....	3.30 p.m...	St. Clair Ave. West, Toronto.	Unknown.....	Ran into gate.
Dec. 1.....		Bonaventure St., Three Rivers.	337 pedestrians..	Passed under gate.
Dec. 1.....		St. Maurice St., Three Rivers.	159 pedestrians..	Passed under gate.
Dec. 1.....	Noon.....	St. Valier St., Quebec	3 pedestrians..	Passed under gate.
Dec. 2.....		Main St., Farnham...	56 pedestrians..	Passed under gate.
Dec. 2.....		St. Louis St., Farn- ham.	24 pedestrians..	Passed under gate.
Dec. 2.....		Royce Ave., Toronto.	89 pedestrians..	Passed under gate.
Dec. 2.....	2.20 p.m...	Bucke Station.....	64-137.....	Disregarded bell.
Dec. 2.....	5.55 p.m...	St. Valier St., Quebec	2 pedestrians..	Passed under gate.
Dec. 3.....		Main St., Farnham...	44 pedestrians..	Passed under gate.
Dec. 3.....		St. Louis St., Farn- ham.	38 pedestrians..	Passed under gate.
Dec. 3.....		Royce Ave., Toronto.	113 pedestrians..	Passed under gate.
Dec. 3.....		Royce Ave., Toronto.	11 bicycles....	Passed under gate.
Dec. 3.....	12.35 p.m...	Bucke Station.....	2 pedestrians..	Disregarded bell.
Dec. 3.....		St. Maurice St., Three Rivers.	269 pedestrians..	Passed under gate.
Dec. 3.....	6.38 p.m...	St. Valier St., Quebec	4 pedestrians..	Passed under gate.
Dec. 4.....		Main St., Farnham...	25 pedestrians..	Passed under gate.
Dec. 4.....		St. Louis St., Farn- ham.	35 pedestrians..	Passed under gate.
Dec. 4.....		Royce Ave., Toronto.	137 pedestrians..	Passed under gate.
Dec. 4.....		Royce Ave., Toronto.	3 bicycles.....	Passed under gate.
Dec. 4.....		Bonaventure St., Three Rivers.	134 pedestrians..	Passed under gate.
Dec. 4.....	7.50 p.m...	St. Valier St., Quebec	4 pedestrians..	Passed under gate.
Dec. 5.....		Main St., Farnham...	22 pedestrians..	Passed under gate.
Dec. 5.....		St. Louis St., Farn- ham.	47 pedestrians..	Passed under gate.
Dec. 5.....		Royce Ave., Toronto.	123 pedestrians..	Passed under gate.
Dec. 5.....		Royce Ave., Toronto.	1 bicycle.....	Passed under gate.
Dec. 5.....	11.15 p.m...	Peter and Wellington, Toronto.	2-739.....	Disregarded stop signal.
Dec. 5.....		St. Maurice St., Three Rivers.	150 pedestrians..	Passed under gate.
Dec. 5.....	11.40 a.m...	St. Valier St., Quebec	6 pedestrians..	Passed under gate.
Dec. 6.....		Main St., Farnham...	28 pedestrians..	Passed under gate.
Dec. 6.....		St. Louis St., Farn- ham.	35 pedestrians..	Passed under gate.
Dec. 6.....		Royce Ave., Toronto.	165 pedestrians..	Passed under gate.
Dec. 6.....	1.05 p.m...	Peter and Wellington, Toronto.	37-575.....	Disregarded stop signal.
Dec. 6.....	1.40 p.m...	Bucke Station.....	120-902.....	Disregarded stop signal.
Dec. 6.....		Bonaventure St., Three Rivers.	246 pedestrians..	Passed under gate.
Dec. 6.....	1.45 p.m...	St. Valier St., Quebec	4 pedestrians..	Passed under gate.
Dec. 6.....	10.55 a.m...	Chelsea Road, Ottawa	Unknown.....	Ran through gate.
Dec. 7.....		Main St., Farnham...	48 pedestrians..	Passed under gate.
Dec. 7.....		St. Louis St., Farn- ham.	40 pedestrians..	Passed under gate.
Dec. 7.....		Royce Ave., Toronto.	127 pedestrians..	Passed under gate.
Dec. 7.....		Royce Ave., Toronto.	9 bicycles.....	Passed under gate.
Dec. 7.....	12.30 p.m...	Peter and Wellington, Toronto.	16-269.....	Disregarded stop signal.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Dec. 7.		St. Maurice St., Three Rivers.	346 pedestrians.	Passed under gate.
Dec. 7.	2.25 p.m.	St. Valier St., Quebec	2 pedestrians.	Passed under gate.
Dec. 8.		Main St., Farnham.	38 pedestrians.	Passed under gate.
Dec. 8.		St. Louis St., Farnham.	31 pedestrians.	Passed under gate.
Dec. 8.		Royce Ave., Toronto.	104 pedestrians.	Passed under gate.
Dec. 8.	9.20 a.m.	Peter and Wellington, Toronto.	544.	Disregarded stop signal.
Dec. 8.	9.25 a.m.	Peter and Wellington, Toronto.	2-707.	Disregarded stop signal.
Dec. 8.	9.35 p.m.	Peter and Wellington, Toronto.	9-000.	Disregarded stop signal.
Dec. 8.	1.50 p.m.	Bucke Station.	120-902.	Disregarded stop signal.
Dec. 8.	5.45 p.m.	St. Valier St., Quebec	5 pedestrians.	Passed under gate.
Dec. 8.		Crown St., Quebec.	12 pedestrians.	Passed under gate.
Dec. 8.	5.30 p.m.	Jackman Crossing.	182.	Disregarded stop signal.
Dec. 9.		Main St., Farnham.	47 pedestrians.	Passed under gate.
Dec. 9.		St. Louis St., Farnham.	28 pedestrians.	Passed under gate.
Dec. 9.		Royce Ave., Toronto.	127 pedestrians.	Passed under gate.
Dec. 9.		Royce Ave., Toronto.	10 bicycles.	Passed under gate.
Dec. 9.		Bonaventure St., Three Rivers.	250 pedestrians.	Passed under gate.
Dec. 9.		St. Maurice St., Three Rivers.	193 pedestrians.	Passed under gate.
Dec. 9.	5.50 p.m.	St. Valier St., Quebec	4 pedestrians.	Passed under gate.
Dec. 10.		St. Louis St., Farnham.	26 pedestrians.	Passed under gate.
Dec. 10.		Royce Ave., Toronto.	174 pedestrians.	Passed under gate.
Dec. 10.		Royce Ave., Toronto.	4 bicycles.	Passed under gate.
Dec. 10.	11.05 a.m.	Bucke Station.	1 pedestrian.	Disregarded bell.
Dec. 10.	1.55 p.m.	St. Valier St., Quebec	6 pedestrians.	Passed under gate.
Dec. 10.		Main St., Farnham.	31 pedestrians.	Passed under gate.
Dec. 11.		Main St., Farnham.	29 pedestrians.	Passed under gate.
Dec. 11.		St. Louis St., Farnham.	37 pedestrians.	Passed under gate.
Dec. 11.		Royce Ave., Toronto.	145 pedestrians.	Passed under gate.
Dec. 11.		Royce Ave., Toronto.	3 bicycles.	Passed under gate.
Dec. 11.	8.50 a.m.	Peter and Wellington, Toronto.	42-085.	Disregarded stop signal.
Dec. 11.	2.40 p.m.	Peter and Wellington, Toronto.	C8-676.	Disregarded stop signal.
Dec. 11.		Bonaventure St., Three Rivers.	306 pedestrians.	Passed under gate.
Dec. 11.		St. Maurice St., Three Rivers.	356 pedestrians.	Passed under gate.
Dec. 11.	12.07 a.m.	St. Valier St., Quebec	7 pedestrians.	Passed under gate.
Dec. 11.		Crown St., Quebec.	11 pedestrians.	Passed under gate.
Dec. 11.		Dorchester St., Quebec.	10 pedestrians.	Passed under gate.
Dec. 11.		Bridge St., Quebec.	13 pedestrians.	Passed under gate.
Dec. 11.	9.17 a.m.	Kingston Road, Belleville.	C-28380.	Disregarded stop signal.
Dec. 12.		Main St., Farnham.	29 pedestrians.	Passed under gate.
Dec. 12.		St. Louis St., Farnham.	26 pedestrians.	Passed under gate.
Dec. 12.		Royce Ave., Toronto.	112 pedestrians.	Passed under gate.
Dec. 12.		Royce Ave., Toronto.	2 bicycles.	Passed under gate.
Dec. 12.	1.35 p.m.	Peter and Wellington, Toronto.	15-775.	Disregarded stop signal.
Dec. 12.	10.35 p.m.	Peter and Wellington, Toronto.	45-983.	Disregarded stop signal.
Dec. 12.	4.40 p.m.	Bucke Station.	1 pedestrian.	Disregarded stop signal.
Dec. 12.	3.12 a.m.	St. Valier St., Quebec.	4 pedestrians.	Passed under gate.
Dec. 12.		Bridge St., Quebec.	14 pedestrians.	Passed under gate.
Dec. 13.		Main St., Farnham.	4 pedestrians.	Passed under gate.
Dec. 13.		St. Louis St., Farnham.	28 pedestrians.	Passed under gate.
Dec. 13.		Royce Ave., Toronto.	121 pedestrians.	Passed under gate.
Dec. 13.		Royce Ave., Toronto.	4 bicycles.	Passed under gate.
Dec. 13.	8.38 a.m.	Peter and Wellington, Toronto.	25-801.	Disregarded stop signal.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Dec. 13.....	3.36 p.m...	St. Valier St., Quebec	5 pedestrians.	Passed under gate.
Dec. 13.....		Dorchester St., Quebec.	19 pedestrians.	Passed under gate.
Dec. 13.....		Bridge St., Quebec....	7 pedestrians.	Passed under gate.
Dec. 13.....	12.20 p.m...	Kingston Road, Belleville.	233685.....	Disregarded stop signal.
Dec. 13.....	5.05 p.m...	Rockland Ave., Montreal.	12.....	Disregarded stop signal.
Dec. 14.....		Main St., Farnham..	33 pedestrians.	Passed under gate.
Dec. 14.....		St. Louis St., Farnham.	37 pedestrians.	Passed under gate.
Dec. 14.....		Royce Ave., Toronto.	109 pedestrians.	Passed under gate.
Dec. 14.....		Royce Ave., Toronto.	4 bicycles....	Passed under gate.
Dec. 14.....		St. Maurice St., Three Rivers.	262 pedestrians.	Passed under gate.
Dec. 14.....	9.45 p.m...	St. Valier St., Quebec	4 pedestrians.	Passed under gate.
Dec. 14.....		Dorchester St., Quebec.	10 pedestrians.	Passed under gate.
Dec. 14.....		Bridge St., Quebec....	9 pedestrians.	Passed under gate.
Dec. 15.....		Main St., Farnham....	26 pedestrians.	Passed under gate.
Dec. 15.....		St. Louis St., Farnham	38 pedestrians.	Passed under gate.
Dec. 15.....		Bonaventure St., Three Rivers.	412 pedestrians.	Passed under gate.
Dec. 15.....	8.25 a.m...	St. Valier St., Quebec.	5 pedestrians.	Passed under gate.
Dec. 15.....		Crown St., Quebec....	8 pedestrians.	Passed under gate.
Dec. 15.....	3.20 p.m...	Douglas Ave. Crossing	1 automobile..	Passed under gate.
Dec. 15.....	6.00 p.m...	Douglas Ave. Crossing	9741.....	Stalled on tracks.
Dec. 15.....		Royce Ave., Toronto.	482 pedestrians.	Passed under gate.
Dec. 15.....		Royce Ave., Toronto.	8 bicycles....	Passed under gate.
Dec. 15.....		Royce Ave., Toronto.	34861.....	Passed around gate.
Dec. 16.....		Main St., Farnham....	11 pedestrians.	Passed under gate.
Dec. 16.....		St. Louis St., Farnham	23 pedestrians.	Passed under gate.
Dec. 16.....	11.40 a.m...	Bucke Station.....	1 pedestrian...	Disregarded bell.
Dec. 16.....		Bonaventure St., Three Rivers.	219 pedestrians.	Passed under gate.
Dec. 16.....		St. Maurice St., Three Rivers.	283 pedestrians.	Passed under gate.
Dec. 16.....	6.37 p.m...	St. Valier St., Quebec.	4 pedestrians.	Passed under gate.
Dec. 16.....		Crown St., Quebec....	2 pedestrians.	Passed under gate.
Dec. 16.....		Royce Ave., Toronto.	203 pedestrians.	Passed under gate.
Dec. 16.....		Royce Ave., Toronto.	8 bicycles....	Passed under gate.
Dec. 17.....		Main St., Farnham....	29 pedestrians.	Passed under gate.
Dec. 17.....		St. Louis St., Farnham	25 pedestrians.	Passed under gate.
Dec. 17.....		Bucke Station.....	2 wagons.....	Disregarded bell.
Dec. 17.....		Bucke Station.....	4 pedestrians.	Disregarded bell.
Dec. 17.....		Bonaventure St., Three Rivers.	354 pedestrians.	Passed under gate.
Dec. 17.....		St. Valier St., Quebec.	4 pedestrians.	Passed under gate.
Dec. 17.....		Bridge St., Quebec....	9 pedestrians.	Passed under gate.
Dec. 17.....	12.00 a.m...	Papineau Ave., Montreal.	6093.....	Ran through gate.
Dec. 17.....	4.55 p.m...	Peter and Wellington, Toronto.	39-177.....	Disregarded stop signal.
Dec. 17.....		Royce Ave., Toronto.	300 pedestrians.	Passed under gate.
Dec. 17.....		Royce Ave., Toronto.	18 bicycles....	Passed under gate.
Dec. 18.....		Main St., Farnham....	30 pedestrians.	Passed under gate.
Dec. 18.....		St. Louis St., Farnham	27 pedestrians.	Passed under gate.
Dec. 18.....		St. Valier St., Quebec.	6 pedestrians.	Passed under gate.
Dec. 18.....		Crown St., Quebec....	17 pedestrians.	Passed under gate.
Dec. 18.....		Bridge St., Quebec....	8 pedestrians.	Passed under gate.
Dec. 18.....	11.55 a.m...	Adelaide St., London.	12-706.....	Disregarded stop signal.
Dec. 18.....	8.20 a.m...	Peter and Wellington, Toronto.	C-935.....	Disregarded stop signal.
Dec. 18.....	8.45 a.m...	Peter and Wellington, Toronto.	36-956.....	Disregarded stop signal.
Dec. 18.....	9.30 a.m...	Peter and Wellington, Toronto.	236-287.....	Disregarded stop signal.
Dec. 18.....		Royce Ave., Toronto.	265 pedestrians.	Passed under gate.
Dec. 18.....		Royce Ave., Toronto.	19 bicycles....	Passed under gate.
Dec. 19.....		Main St., Farnham..	26 pedestrians.	Passed under gate.
Dec. 19.....		St. Louis St., Farnham.	31 pedestrians.	Passed under gate.
Dec. 19.....		St. Maurice St., Three Rivers.	288 pedestrians.	Passed under gate.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Dec. 19		St. Valier St., Quebec.	4 pedestrians.	Passed under gate.
Dec. 19		Bridge St., Quebec....	3 pedestrians.	Passed under gate.
Dec. 19	9.10 p.m.	John St., Toronto.....	29080.....	Ran into gate.
Dec. 19	9.10 p.m.	Peter and Wellington, Toronto.	C29-080.....	Disregarded stop signal.
Dec. 19	12.30 p.m.	Peter and Wellington, Toronto.	22-392.....	Disregarded stop signal.
Dec. 19	12.50 p.m.	Peter and Wellington, Toronto.	30-246.....	Disregarded stop signal.
Dec. 19	12.54 p.m.	Peter and Wellington, Toronto.	C3-869.....	Disregarded stop signal.
Dec. 19		Royce Ave., Toronto.	291 pedestrians.	Passed under gate.
Dec. 19		Royce Ave., Toronto.	23 bicycles....	Passed under gate.
Dec. 20		Main St., Farnham....	25 pedestrians.	Passed under gate.
Dec. 20		St. Louis St., Farnham...	32 pedestrians.	Passed under gate.
Dec. 20	7.37 a.m.	Bucke Station.....	1 pedestrian..	Passed under gate.
Dec. 20		Bonaventure St., Three Rivers.	300 pedestrians.	Passed under gate.
Dec. 20		St. Valier St., Quebec.	4 pedestrians.	Passed under gate.
Dec. 20		Dorchester St., Quebec	8 pedestrians.	Passed under gate.
Dec. 20		Bridge St., Quebec....	6 pedestrians.	Passed under gate.
Dec. 20		Royce Ave., Toronto.	193 pedestrians.	Passed under gate.
Dec. 20		Royce Ave., Toronto.	16 bicycles....	Passed under gate.
Dec. 20	4.20 p.m.	Douglas Ave. Crossing	Wagon.....	Passed under gate.
Dec. 21		Main St., Farnham....	26 pedestrians.	Passed under gate.
Dec. 21		St. Louis St., Farnham...	33 pedestrians.	Passed under gate.
Dec. 21	1.35 p.m.	Bucke Station.....	1 pedestrian..	Passed under gate.
Dec. 21		St. Valier St., Quebec.	6 pedestrians.	Passed under gate.
Dec. 21		Crown St., Quebec....	10 pedestrians.	Passed under gate.
Dec. 21		Bridge St., Quebec....	10 pedestrians.	Passed under gate.
Dec. 21	9.15 p.m.	Peter and Wellington, Toronto.	249-919.....	Disregarded stop signal.
Dec. 21	1.25 p.m.	Peter and Wellington, Toronto.	175-909.....	Disregarded stop signal.
Dec. 21	2.30 p.m.	Peter and Wellington, Toronto.	6-470.....	Disregarded stop signal.
Dec. 21	2.35 p.m.	Peter and Wellington, Toronto.	33-260.....	Disregarded stop signal.
Dec. 21		Royce Ave., Toronto.	200 pedestrians.	Passed under gate.
Dec. 21		Royce Ave., Toronto.	16 bicycles....	Passed under gate.
Dec. 22		Main St., Farnham....	29 pedestrians.	Passed under gate.
Dec. 22		St. Louis St., Farnham...	31 pedestrians.	Passed under gate.
Dec. 22		St. Maurice St., Three Rivers.	312 pedestrians.	Passed under gate.
Dec. 22	1.36 p.m.	St. Valier St., Quebec.	4 pedestrians.	Passed under gate.
Dec. 22		Bridge St., Quebec....	4 pedestrians.	Passed under gate.
Dec. 22	10.45 a.m.	Kingston Rd., Belle- ville.	186908.....	Disregarded stop signal.
Dec. 22		Royce Ave., Toronto.	80 pedestrians.	Passed under gate.
Dec. 22		Royce Ave., Toronto.	7 bicycles....	Passed under gate.
Dec. 22		Royce Ave., Toronto.	15043.....	Passed around gate.
Dec. 23		Main St., Farnham....	30 pedestrians.	Passed under gate.
Dec. 23		St. Louis St., Farnham...	32 pedestrians.	Passed under gate.
Dec. 23		St. Maurice St., Three Rivers.	344 pedestrians.	Passed under gate.
Dec. 23		St. Valier St., Quebec.	3 pedestrians.	Passed under gate.
Dec. 23		Dorchester St., Que- bec.	9 pedestrians.	Passed under gate.
Dec. 23		Bridge St., Quebec....	10 pedestrians.	Passed under gate.
Dec. 23	10.10 a.m.	Adelaide St., London.	67-674.....	Disregarded stop signal.
Dec. 23		Royce Ave., Toronto.	135 pedestrians.	Passed under gate.
Dec. 23		Royce Ave., Toronto.	18 bicycles....	Passed under gate.
Dec. 24		Main St., Farnham....	53 pedestrians.	Passed under gate.
Dec. 24		St. Louis St., Farnham...	34 pedestrians.	Passed under gate.
Dec. 24		Bonaventure St., Three Rivers.	211 pedestrians.	Passed under gate.
Dec. 24		St. Valier St., Quebec.	6 pedestrians.	Passed under gate.
Dec. 24		Crown St., Quebec....	17 pedestrians.	Passed under gate.
Dec. 24		Dorchester St., Quebec	14 pedestrians.	Passed under gate.
Dec. 24	7.45 p.m.	Peter and Wellington, Toronto.	250-534.....	Disregarded stop signal.
Dec. 24		Royce Ave., Toronto.	190 pedestrians.	Passed under gate.
Dec. 24		Royce Ave., Toronto.	9 bicycles....	Passed under gate.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Dec. 25.....		Main St., Farnham....	17 pedestrians.	Passed under gate.
Dec. 25.....		St. Louis St., Farnham.	35 pedestrians.	Passed under gate.
Dec. 25.....		St. Valier St., Quebec.	9 pedestrians.	Passed under gate.
Dec. 25.....		Royce Ave., Toronto.	173 pedestrians.	Passed under gate.
Dec. 25.....		Royce Ave., Toronto.	7 bicycles.....	Passed under gate.
Dec. 25.....		Royce Ave., Toronto.	36258.....	Passed around gate.
Dec. 25.....		Royce Ave., Toronto.	14456.....	Passed around gate.
Dec. 26.....		Main St., Farnham....	29 pedestrians.	Passed under gate.
Dec. 26.....		St. Louis St., Farnham	42 pedestrians.	Passed under gate.
Dec. 26.....		Bonaventure St., Three Rivers.	300 pedestrians.	Passed under gate.
Dec. 26.....		St. Maurice St., Three Rivers.	238 pedestrians.	Passed under gate.
Dec. 26.....		St. Valier St., Quebec	4 pedestrians.	Passed under gate.
Dec. 26.....	1.00 p.m.	Peter and Wellington, Toronto.	294-684.....	Disregarded stop signal.
Dec. 26.....		Royce Ave., Toronto.	147 pedestrians.	Passed under gate.
Dec. 26.....		Royce Ave., Toronto.	7 bicycles.....	Passed under gate.
Dec. 27.....		Main St., Farnham....	15 pedestrians.	Passed under gate.
Dec. 27.....		St. Louis St., Farnham	55 pedestrians.	Passed under gate.
Dec. 27.....	4.40 p.m.	Bucke Station.....	2 pedestrians.	Disregarded stop signal.
Dec. 27.....		St. Valier St., Quebec.	4 pedestrians.	Passed under gate.
Dec. 27.....		Crown St., Quebec....	13 pedestrians.	Passed under gate.
Dec. 27.....		Dorchester St., Quebec.	6 pedestrians.	Passed under gate.
Dec. 27.....		Bridge St., Quebec....	22 pedestrians.	Passed under gate.
Dec. 27.....	5.50 p.m.	Pall Mall St., London.	67-262.....	Ran into gate.
Dec. 27.....	9.30 a.m.	Peter and Wellington, Toronto.	C-6461.....	Disregarded stop signal.
Dec. 27.....		Royce Ave., Toronto.	151 pedestrians.	Passed under gate.
Dec. 27.....		Royce Ave., Toronto.	6 bicycles.....	Passed under gate.
Dec. 27.....		Osler Ave., Toronto...	1 pedestrian.	Passed under gate.
Dec. 28.....		Main St., Farnham....	27 pedestrians.	Passed under gate.
Dec. 28.....		St. Louis St., Farn- ham.	43 pedestrians.	Passed under gate.
Dec. 28.....	10.50 a.m.	Bucke Station.....	1 pedestrian..	Disregarded stop signal.
Dec. 28.....		St. Maurice St., Three Rivers.	251 pedestrians.	Passed under gate.
Dec. 28.....	10.30 p.m.	St. Valier St., Quebec	2 pedestrians.	Passed under gate.
Dec. 28.....	2.20 p.m.	Peter and Wellington, Toronto.	37-065.....	Disregarded stop signal.
Dec. 28.....	9.15 p.m.	Peter and Wellington, Toronto.	239-361.....	Disregarded stop signal.
Dec. 28.....	9.40 a.m.	Peter and Wellington, Toronto.	42-269.....	Disregarded stop signal.
Dec. 28.....		Royce Ave., Toronto.	121 pedestrians.	Passed under gate.
Dec. 28.....		Royce Ave., Toronto.	9 bicycles....	Passed under gate.
Dec. 29.....		Main St., Farnham....	53 pedestrians.	Passed under gate.
Dec. 29.....		St. Louis St., Farn- ham.	42 pedestrians.	Passed under gate.
Dec. 29.....	1.35 p.m.	Bucke Station.....	C-1-705.....	Disregarded stop signal.
Dec. 29.....		Bonaventure St., Three Rivers.	179 pedestrians.	Passed under gate.
Dec. 29.....		St. Maurice St., Three Rivers.	69 pedestrians.	Passed under gate.
Dec. 29.....		St. Valier St., Quebec.	10 pedestrians.	Passed under gate.
Dec. 29.....		Dorchester St., Que- bec.	8 pedestrians.	Passed under gate.
Dec. 29.....	9.15 p.m.	Peter and Wellington, Toronto.	235-677.....	Disregarded stop signal.
Dec. 29.....		Royce Ave., Toronto.	148 pedestrians.	Passed under gate.
Dec. 29.....		Royce Ave., Toronto.	13 bicycles....	Passed under gate.
Dec. 30.....		Main St., Farnham....	25 pedestrians.	Passed under gate.
Dec. 30.....		St. Louis St., Farn- ham.	34 pedestrians.	Passed under gate.
Dec. 30.....		St. Valier St., Quebec	6 pedestrians.	Passed under gate.
Dec. 30.....		Dorchester St., Que- bec.	5 pedestrians.	Passed under gate.
Dec. 30.....		Royce Ave., Toronto	192 pedestrians.	Passed under gate.
Dec. 30.....		Royce Ave., Toronto.	7 bicycles.....	Passed under gate.
Dec. 31.....		Main St., Farnham....	20 pedestrians.	Passed under gate.
Dec. 31.....		St. Louis St., Farn- ham.	58 pedestrians.	Passed under gate.

CANADIAN PACIFIC RAILWAY LINES—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Dec. 31.....		St. Maurice St., Three Rivers.	341 pedestrians.	Passed under gate.
Dec. 31.....		St. Valier St., Quebec	4 pedestrians.	Passed under gate.
Dec. 31.....		Crown St., Quebec....	13 pedestrians.	Passed under gate.
Dec. 31.....		Bridge St., Quebec....	18 pedestrians.	Passed under gate.
Dec. 31.....	11.15 p.m...	Waterloo St., London.	65-808.....	Ran into gate.
Dec. 31.....		Royce Ave., Toronto.	158 pedestrians.	Passed under gate.
		Osler Ave., Toronto...		There is an average of from 150 to 375 pedestrians who push gates aside daily.
		Lansdowne Ave., Toronto.		There is an average of from 150 to 400 pedestrians who push gates aside daily.
		Dufferin St., Toronto.		There is an average of from 30 to 50 pedestrians who push gates aside daily.

NEW BRUNSWICK DISTRICT

Mar. 6.....		Main Street, Fairville, N.B.	3346.....	Broke through N.W. gate.
In June.....		Main Street, Fairville, N.B.		478 persons passed under gates when down between 2 and 10 p.m.
July 17.....		Douglas Avenue, St. John, N.B.		City light out on Avenue until 8.30 p.m. leaving crossing very dark.
Aug. 10.....	4.10 p.m...	Douglas Avenue, St. John, N.B.	14045.....	Dashed under gates while being lowered.
Aug. 12.....	7.20 p.m...	Douglas Avenue, St. John, N.B.	12666.....	Dashed under gates while lights were being put on.
Sept. 10.....	3.20 p.m...	Main Street, Fairville, N.B.	1983	Broke West King gate.

QUEBEC DISTRICT—MONTREAL TERMINALS DIVISION

July 15.....	10.55 a.m...	Papineau Ave., Montreal.	F-3714.....	Ran through gate.
July 16.....	8.55 a.m...	Papineau Avenue, Montreal.	KS-606.....	Ran through gate.
July 26.....	7.30 p.m...	Rockland Avenue, Montreal.	18609.....	Ran through gate.

OTTAWA DIVISION

May 18.....	10.50 p.m...	Chelsea Road, Hull West, Que.	Unknown.....	Ran through gate.
July 11.....	10.00 p.m...	Chelsea Road, Hull West, Que.	Que. 4 4 4	Ran through gate.
July 26.....	10.35 p.m...	Chelsea Road, Hull West, Que.	Unknown.....	Ran through gate.
Aug. 3.....	9.35 p.m...	Chelsea Road, Hull West, Que.	Unknown.....	Ran through gate.

SMITHS FALLS DIVISION

Aug. 14.....	7.45 a.m...	Lake Shore Road, Vaudreuil.	Unknown.....	Auto ran under gates while same were being lowered. Driver looking out for steam roller which was passing at time and did not notice gates being lowered.
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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, December 1, 1924

No. 19

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Application of the Vancouver Machinery Depot Limited, Vancouver, B.C., for a ruling of the Board in the matter of refusal of the Canadian Pacific Railway Company to handle shipments which weigh over 2,000 pounds as regards loading and unloading, the applicant being compelled to handle, pay cartage, and staking of shipments on the cars.

File 18663.35

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The applicant sets out:—

(1) That on all shipments of machinery weighing over 2,000 pounds and shipped in less than carload lots, he is compelled to handle this machinery either himself or by his cartage company, through the railway company's warehouse and on to the railway company's cars; and, in addition to loading it, also to stake it to their requirements; and he contends in this connection that it is not fair to expect him to do loading for which "we are charged by the freight tariff."

(2) He complains that when these heavy shipments are put in the car, the car checker is not always available, and that on a number of occasions the staking or fastening put in by him was not acceptable to the company's car checker when he did arrive to check the work.

Rule 12 of the Canadian Freight Classification provides—

"Freight weighing 2,000 pounds or over, per piece or package; also all freight in 6th, 7th, 8th, 9th and 10th classes must be loaded and unloaded by owners."

So far as this rule is concerned, it may be noted that it is of long standing, ante-dating the organization of this Board. As far back as 1890, Classification No. 7, by Rule 11, provided that all heavy freight of 1,000 pounds or over, per piece or package, was to be loaded and unloaded by owners. In Classification No. 9, of June, 1893, Rule 11 provided that all heavy freight of 2,000 pounds or over, per piece or package, was to be loaded and unloaded by owners.

It was pointed out that the applicant objected to being compelled to handle machinery through the railway company's warehouse on to the railway company's cars. This matter was raised before the Board in *re Consideration of the question of future practices of Railway Companies regarding cartage service. File 18663. Evid. Vol. 193, p. 11074.* The hearing in this matter was held in Ottawa, December 16, 1913. Counsel for the Hamilton Board of Trade objected very strongly to being in the position that if he took goods to a carrier he had to load them or unload them into or out of the cars. He contended that the carrier must take goods at the car door and hand them to the consignee at the car door. Continuing, he said at p. 11090:—

“I say that ought to apply, and I do not see why it is not applied to all goods on the principle that I have no legal right inside their car. Therefore I say that should be an absolutely clear rule, that I am only bound to receive the goods at the outside and to deliver them at the outside.”

Rule 12 of the Classification was referred to as covering this, and the Board did not see fit to take exception to the position covered by the rule, or to accede to the principle which counsel for the Hamilton Board of Trade so strongly advocated.

As above pointed out, the applicant contends that it is unfair to require the shipper, in addition to loading, also to stake the machinery according to the requirements of the railway.

It would appear that in the less-than-carload shipments of the nature involved it has to be borne in mind that various articles of different types may be handled in the same car, and it would appear to be reasonable that the shipment should be so placed and fastened that it would not interfere with the security of the other shipments which might be liable to damage in the absence of such secure placing or fastening.

If the shipper has to load, it would appear that the loading is not complete until the staking necessary to keep it properly in place is complete, and that, therefore, such staking is a necessary incident of the loading.

In regard to the contention of the applicant that it is unfair for the railway to require shipper to do the loading, on the ground that the loading is already paid for in the freight rate, all that need be said is that there is no evidence adduced by the applicant in support of his contention.

The difficulty referred to by him, namely, that the car checker may not always be available at the time shipment is made, is one on which no rule or regulation can be issued by this Board. It is a matter of detail arrangement between the shipper and the railway, which must of necessity be worked out between themselves.

October 24, 1924.

Commissioner Boyce concurred.

COMMISSIONER OLIVER:

I agree, except as to the last paragraph. It would appear to me that the shipper is entitled to supervision of his loading, or immediate approval on its completion, by a representative of the carrier on due notice to it by the shipper of the time at which he intends to load, and that an order of the Board might properly be made to that effect.

October 28, 1924.

Application of the North Battleford (Sask.) Board of Trade, for an Order requiring the construction of transfer track from a point at or near Rossman, Sask., on the Canadian National Railways, to a point at or near Cut Knife, on the Canadian Pacific Railway.

File 6713.169

Heard at Saskatoon, June 10, 1924.

JUDGMENT

COMMISSIONER BOYCE:

Application is made by the North Battleford Board of Trade, in the following terms:—

“The North Battleford Board of Trade hereby makes application for an order requiring the construction of a transfer track from a point at or near Rossman, Sask., on the Canadian National Railways, to a point at or near Cut Knife, on the Canadian Pacific Railway, in order that wholesalers and other shippers in North Battleford may be able to serve points along the Canadian Pacific Railway Cut Knife Branch. The points along the greater portion of this branch are much nearer to North Battleford than to any other distributing centre, and it is contended, therefore, that North Battleford is the logical distributing centre for these markets, and that the North Battleford shippers should have access to them.”

An application dated January 30, 1919, seeking a connection between the same lines by a transfer track from Cut Knife from the Canadian Pacific Railway—Wilkie-Cut Knife Branch—to the Cut Knife-Battleford Branch of the Grand Trunk Pacific Railway (now Canadian National Railways) and involving, substantially, the same service had been considered by the Board and refused March 27, 1919.

At the hearing at Saskatoon the applicants contended that the transfer track asked for (cost of which was estimated by the Canadian Pacific Railway officials at \$40,000) should be at the expense of one or other, or both, of the railways.

Mr. Fraser, K.C., for the Canadian National Railways, questioned the powers of the Board to deal with the application as launched, and, as the Assistant Chief Commissioner, then presiding, stated, the question of jurisdiction is fundamental, the issue raised may now be dealt with, all parties having had full opportunity of making their submissions thereon and having done so, Mr. Fraser contends that the only section warranting the making of interchange orders is section 253. At the hearing I referred to section 312 (e) and asked counsel their views as to the application of that section. At the time the Chairman, the Assistant Chief Commissioner, stated that he did not think that any application for an interchange track had been dealt with under the last-mentioned section 312 (e). Upon consideration I am satisfied that the application must come under, and be governed by, the provisions of section 253, which section, it is contended, does not warrant the Board, in the circumstances, in making the order asked for, even though a proper case for interchange had otherwise been made out.

Section 253 (1) of the Railway Act reads as follows:—

“Where the lines or tracks of one railway are intersected or crossed by those of another, or upon any application for leave to make any intersection or crossing, or in any case in which the tracks or lines of two different railways run through or into the same city, town, or village,

the Board may, upon the application of one of the companies, or of a municipal corporation or other public body, or of any person, or persons interested, order that the lines of such railways shall be so connected, at or near the point of intersection or crossing, or in or near such city, town, or village, as to admit of the safe and convenient transfer or passing of engines, cars and trains, from the tracks or lines of one railway to those of another, and that such connection shall be maintained and used."

I think that Mr. Fraser is correct in his contention that a case must be made out, *prima facie*, falling within the meaning and intent of that section before the Board can go farther towards making an interchange order. The objection, I think, is fundamental, and, if it be well taken, the application is not properly before the Board and must, upon present material, fail.

To analyze the section, it would appear that the right, or jurisdiction of the Board to make an order for connection of tracks, or provide for interchange, is dependent upon the existence of the following statutory conditions, viz:—

(a) "Where the lines, or tracks, of one railway are intersected or crossed by those of another." This is clearly not the case as there is no physical connection between the two railways involved in the application.

(b) "or upon any application for leave to make any intersection, or crossing" or

(c) "in any case in which the tracks or lines of two different railways run through or into the same city, town, or village,

"the Board may (1) upon the application of one of the companies, or (2) of a municipal corporation or other public body, or, (3) of any person or persons interested, order that the lines or tracks of such railways shall be so connected, at or near the point of intersection or crossing or in or near such city, town or village, as to admit of the safe and convenient transfer or passing of engines, cars and trains, from the tracks or lines of one railway to those of another, etc., etc."

After having given to the section the consideration due to the arguments of opposing counsel, I am of opinion that, in instances (a) and (b) the clear intention of the section is that the application must necessarily be made by one of the railway companies whose tracks or lines, outside of a city, town or village, are either already intersected or crossed, or are proposed to be intersected, or crossed by another railway, and that the interests of "a municipal corporation or other public body, or of any person or persons interested" do not arise unless, as in instance (c) "the tracks or lines of two different railways run through or into the same city, town or village." I cannot conceive that where the lines or tracks of two railways do not run through a city, town, or village, the municipal corporation, or other public body, or any other person, or persons is, or are, "interested" in an application for interchange, or have any *locus standi* before the Board under section 253 to make an application for the connection. If, however, the lines, or tracks of the two railways, on which interchange is desired, do run through, or into the same city, town, or village, the interchange, upon the application of the municipal corporation, public body, or of other person or persons interested, might be made "at or near the point of intersection or crossing, or in or near such city, town, or village" as in the opinion of the Board will best "admit of the safe and convenient transfer, etc., etc." The interest of the public is involved in the latter instance, (c), while, I think, that of the railways concerned is only involved in the instances (a) and (b). The same principle is carried into subsection (3) of section 253, in the case of a crossing or intersection of a Dominion with

a provincial Railway. And, where the Municipality acts, as in instance (c), it may do so, as representing the public and without necessarily involving itself in, or committing itself to, the burden of cost of installing or maintaining the interchange which may, upon investigation, be ordered by the Board in the interest of the public, in such city, town or village.

Grand Trunk Ry. Co. v. Village of Cedar Dale et al, 7 C.R.C., p. 73.

Town of Thorold v. G.T.R. & N., St. C. & T. Ry. Co., 24 C.R.C., p. 21, and cases there cited.

This, of course, does not exempt such a municipality from its liability to contribute to street crossing protection rendered necessary.

City of Toronto v. Canadian Pacific Ry. Co. (1908), A.C., p. 54.

7 C.R.C., 282—*Collins, L.J.*, at p. 287.

I cannot find in the section, or elsewhere in the Act, any words indicating an intention that where the lines or tracks of two railways do not run through, or into, the same city, town or village, the municipal corporation, public body, or other person, or persons interested, had the right to apply to this Board, under this section, or under any other section of the Act, to compel two railways so to join their lines or tracks anywhere outside the city, town, or village, as to bring the railways into, or in touch with, the municipality, so as to serve the interests of its people. Such a construction would involve endless and far-reaching complexities and would be subversive of the true intent of the Railway Act and of the decisions of the Board, and of the courts upon the principles upon which such interchange should be permitted, and the right of railway companies to build their lines and serve territory as they saw advisable would be unjustly interfered with to their serious prejudice and disadvantage.

I think the principle of interchange should not be so broadened, but that the section should receive the interpretation I have indicated which would be in harmony with the spirit and policy of the Act, and of the decisions of the Board, and of the courts under it.

Canadian Northern Ontario Ry. Co. v. C.P.R. Co., 20 C.R.C., p. 200.

Gillies v. G.T.R., 18 C.R.C., p. 44.

Mr. Panton's argument does not give us much assistance. He says that the objection is academic rather than practical. That it would be very simple to extend the municipal limits of Cut Knife to include the siding of Rossman and so overcome, as he contends, the difficulty involved in Mr. Fraser's objection. The answer to that is, if it be so, that Mr. Panton does not appear for the municipality of Cut Knife, nor for any municipality—no municipality being represented or being a party to, or interested in, the application, but, for the Board of Trade of North Battleford, which is the applicant, and could not speak for the municipality. In any case, the conditions are as stated, and the objection goes to these facts.

I do not think, in the circumstances before us, that the applicant had any such interest as would, in the view I take of the section, warrant it in making the application. I do not think that section 253 contemplates or permits such an application being made, and if it is made, I do not think that this Board can make the order asked. It follows that the application, as made, is, in my opinion, not within section 253, and I am unable to find any authority for it elsewhere in the Railway Act.

I must hold that the objection is well taken, and that, in the circumstances, the Board has no power to entertain the application as launched.

It is unnecessary for me to deal with the merits of the application now. I may, however, say that I do not think that the applicants, aside from the objection, have made out a case for an interchange; the onus of the establishment of which is on the applicants. Apart from the statements of Mr. Panton that the interchange is desired by several towns in the district there is no evidence of such a demand. The evidence, therefore, most material to all applications of this kind, that the interchange is required in the interests of the public generally, is entirely lacking. The traffic to be served is entirely conjectural, and, therefore, uncertain. The Board has no definite information other than the statement, to a large extent concurred in by counsel for the applicant (p. 4133) that the traffic to be interchanged would be less than carloads. In granting interchange facilities, the Board must be satisfied as to the necessity in the public interest for the interchange, and I do not think that an interchange has ever been granted to serve L.C.L. shipments.

I regard the application—on the merits—as being entirely unsupported by satisfactory evidence, and were the objection not to prevail, I could not find that upon what is before us, that the Board would be justified in imposing an estimated expense of from \$40,000 to \$45,000, however borne or distributed, to build an interchange for traffic purely conjectural.

The application fails and must be dismissed.

The Assistant Chief Commissioner and Commissioner Oliver concurred.
OTTAWA, October 27, 1924.

Application of the Municipal Council of the Town of Pembroke, Ont., and the Pembroke Board of Trade for interchange tracks between the Canadian Pacific, the Grand Trunk and Canadian National Railways, in the Town of Pembroke, Ont.

File 6713.50

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

This matter has been heard both in Pembroke and in Ottawa. At the hearing in Pembroke, evidence in support of the application was presented by the applicants. A statement was filed under Exhibit (C) setting out the number of carloads hauled to or from the Canadian National Railways for the year 1922 and for January and February of 1923, from industries located on the Canadian Pacific Railway. The total number of carloads so given was 1,260. There was also included in this a statement of carloads to or from the Canadian Pacific Railway for the same period, from industries located on the Grand Trunk Railway, the only industry mentioned being the Pembroke Plywood Company, with a total of ten cars.

The Canadian Pacific Railway Company stated that during the year 1922 the total carload movement to and from the private sidings on the line of the Canadian Pacific Railway was 3,278; and it was stated that of this figure all but 276 outwards, that is to Canadian local points, would be handled without interchange.

In Exhibit (B), there is contained detail in regard to the business of sixty firms—merchants, manufacturers, traders and others—stating the number of carloads concerned with movements in and out of the town of Pembroke in 1922. This shows a total of 8,166. This covers the traffic both from private sidings and public team tracks, and was stated to have been submitted not as evidence of what traffic will be interswitched, but as giving some idea of the extent to which industrial development existed in Pembroke.

In addition to this material being submitted, it was stated that in some instances there would be advantages in having the car supply of two railways available in time of shortage. It was admitted at the hearing in Ottawa, later referred to, that car shortage was not a matter of importance to-day.

Various applicants, both at the hearing in Pembroke and at the hearing in Ottawa, stated that on account of conditions necessitating Canadian National delivery or delivery to points served by Canadian National connections it was necessary to undergo the expense of teaming at Pembroke; an expense, which making allowance for the interswitching charge, would be to a considerable extent diminished.

Both the Canadian Pacific and the Canadian National were critical of the proposition from the standpoint of expense. The Canadian Pacific Railway pointed out that with the exception of one industry, all the private siding owners were on the Canadian Pacific lines, and that no exception was being taken by the shippers and consignees in Pembroke to the service given by the Canadian Pacific Railway. The expense was put forward as being about \$40,000. The Canadian Pacific Railway was opposed to an interchange track being put in, urging strongly in this connection that exception was not taken to the service rendered by it.

The Canadian National Railways stated it was willing to make a fair contribution to the cost. This was not stated more definitely. It was submitted by Mr. Fraser, however, that the industries might fairly contribute something in aid of the interchange facilities.

Subsequent to the hearing, it was represented on behalf of the applicants that there was a desire to submit additional and material evidence. Correspondence took place between counsel for the applicants and the late Chief Commissioner, opportunity being afforded to the applicants to submit in writing these submissions, copies of which were to go to the railways for their consideration.

The next step was that taken under date of July 18 by the Canadian National Railways, in a letter addressed to the Board reading as follows:—

"An application made by the Municipal Council of Pembroke and the Pembroke Board of Trade for interchange tracks between the Canadian Pacific, Grand Trunk and Canadian National Railways was heard at Pembroke on the 22nd of March, 1923, but no judgment has yet been issued by the Board.

"I inclose herewith two blue-prints on linen showing a proposed industrial spur and interswitching connection at this point. This spur is 1.38 miles in length and leaves the Beachburg Subdivision at mileage 88.6. There is also a siding which leaves the main spur at mile 44÷08.1; but it is not proposed to construct this track at the present time.

"In the absence of a judgment by the Board on the pending application, it is a little difficult to know just how to proceed, more particularly with respect to the division of cost, but we would expect the Canadian Pacific at least to construct a siding parallel to their main line upon which they would place cars for us and we will provide a track on which we will place cars for them.

"The actual details of the track arrangement where we join the Canadian Pacific Railway are subject to revision. If the Canadian Pacific have objections to them we are not aware of them at the present time.

"In order that the whole situation may be cleared up, the Canadian National should be given the right to switch the spurs of the Shooks Mills and the Steel Equipment Company."

The Canadian Pacific in its answer stated that it had contended throughout that the conditions at Pembroke did not justify the issuance of an order for interswitching; that this would simply result in throwing open to the Canadian National the Canadian Pacific terminals, to the great detriment of the Canadian Pacific, with no corresponding benefit to it. It further stated that there was practically no suggestion that the industries tributary to the Canadian Pacific lines in Pembroke were not receiving satisfactory service to-day.

The matter was thereafter set down for hearing.

The evidence submitted on behalf of the original applicants simply emphasized the points already referred to; and, in general, the position of the original applicants may be said to have been one of support of the application launched by the Canadian National Railways.

In considering the matters involved, the evidence taken at the Pembroke hearing, it was stated at the Ottawa hearing, would be considered in connection with the determination of the matter.

The town of Pembroke has had and is having a very considerable industrial development. There is no question of this. The fundamental question is whether conditions are such as to necessitate and justify interchange facilities being established.

The Board notes in the present case the exceptions taken by the Canadian Pacific Railway to the interchange, both from the standpoint of there being no valid objection to the type of service it is performing and, also, from the standpoint that the great preponderance of advantage would be to the Canadian National Railways under the interchange arrangement.

The arguments pro and con advanced in the course of both of the hearings, in general, are not new. I have had occasion to deal with a somewhat similar situation involving somewhat similar arguments in the *Simcoe Case*, dealing with the question of the installation of interchange facilities between the Lake Erie and Northern and the Grand Trunk Railway Companies—*Board's Judgments and Orders, Vol. XII, p. 89*. It may be remarked that the Lake Erie and Northern—the junior railway line—controlled by the Canadian Pacific Railway Company, had only one industry served by private siding. What was said there is, I think, pertinent here and, without going into further detail, I am of the opinion that there is such a situation at Pembroke as justifies direction for interchange facilities.

There remains, then, the question of distribution of cost.

At the hearing in Ottawa, *Evid. Vol. 432, p. 9001*, Mr. Fraser used the following language:—

“The situation is this, Mr. Chairman, that after the hearing at the town of Pembroke, at which judgment was reserved, there was a good deal of delay for one reason and another. The Canadian National looked further into the whole question and volunteered to build the track themselves, at their own expense, without expense to any of the other parties. Thereupon we filed plans and made application for leave to connect, under section 252 of the Railway Act. That is our position now. We are willing to relieve the other parties from any portion of the cost. That is the whole effect of the application.”

At the hearing in Ottawa, counsel for the Canadian Pacific, while taking exception in general to what was proposed, took particular exception to the method of operation which would be involved under the plans filed, necessitating, as he pointed out, a switching movement on the Canadian Pacific main line. I questioned Mr. Fraser, of the Canadian National Railways, in regard to this question of expense. At p. 9013, the following discussion took place:—

"The ASSISTANT CHIEF COMMISSIONER: To get it on the record concisely, you propose at your expense—put it in short form, what you propose to do at your own expense, and what if any additional expense would be borne by the Canadian Pacific Railway, and for what?"

"Mr. FRASER: We do not ask them to bear any portion of the cost at all.

"The ASSISTANT CHIEF COMMISSIONER: Does it not follow from what you have proposed that there would be some construction necessary by the Canadian Pacific Railway?"

"Mr. FRASER: No, sir.

"The ASSISTANT CHIEF COMMISSIONER: You propose that all the work covered by this plan, including the interchange track, shall be done at your expense?"

"Mr. FRASER: That is correct.

"The ASSISTANT CHIEF COMMISSIONER: I only wanted to have it made clear."

When counsel for the Canadian Pacific took exception to the operation on his company's main line necessitated by the plans, I again questioned Mr. Fraser; and the following excerpt from p. 9025 of the evidence is material:—

"The ASSISTANT CHIEF COMMISSIONER: Pardon me, I thought in general terms that Mr. Fraser had suggested that these plans, if on a study by the Board's Engineering and Operating Departments, were found to present obstacles in the way of proper operation by the Canadian Pacific Railway, that they could be made effective at the expense of the Canadian National Railways?"

"Mr. FRASER: Yes, Mr. Chairman."

The Board has had the matter looked into on the ground by its Assistant Chief Engineer and Chief Operating Officer, in company with the engineers representing both railways; and their report reads as follows:—

"It was agreed on the ground that the most convenient plan for interswitching would be to lengthen the Canadian Pacific Railway spur to the Steel Equipment Company, a distance of 1,300 feet approximately, by moving the main line switch to the west and connecting the transfer track to this spur at a point about 800 feet east of the main line connection, thus providing a switching lead for the Canadian Pacific Railway long enough to do away with the necessity of the latter using its main line as a switching lead. We have shown in black on the plan roughly what this scheme involves. It will be observed that it does not afford the Canadian National Railways a connection with the Shook Mill tracks.

"If the latter requires a run-around track, there is, of course, nothing to prevent its construction.

"The proposal shown in black requires less trackage than the Canadian National Railways layout, and we recommend that the plan, profile and book of reference dated June 30, 1924, as amended in black be approved."

I am, therefore, of opinion that, subject to the modifications above indicated in regard to the plan filed, order may go for the interchange trackage concerned; all cost of same being upon the Canadian National Railways. It follows from this that the lengthening of the Canadian Pacific Railway spur to the Steel Equipment Company, as referred to above, is to be at the expense of

the Canadian National Railways, from the standpoint of cost of grading, ties, rails and necessary fastenings.
November 18, 1924.

Commissioner Boyce concurred.

GENERAL ORDER No. 409

In the matter of the application of the Bell Telephone Company of Canada, hereinafter called the "Applicant Company," under Section 375 of the Railway Act, 1919, for approval of Exchange and Toll Line form of Agreement No. 650 A in substitution for the form No. 650, approved by General Order No. 375, dated March 17, 1923, on file with the Board under case No. 538.

WEDNESDAY, the 5th day of November, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and the consents of the Ontario Railway and Municipal Board and the Public Service Commission of the Province of Quebec, filed,—

The Board orders: That the said Exchange and Toll Line form of Agreement No. 650 A, to be entered into between the applicant company and any other company, municipality or corporation having authority to construct or operate a telephone system or line, on file with the Board under case No. 538 be, and it is hereby, approved.

2. That General Orders Nos. 114 and 375, dated respectively November 12, 1913, and March 17, 1923, made herein, be, and they are hereby, rescinded.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 35754

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Lanigan Northeasterly Branch from Mileage 82.78 to 83.56.

File No. 29383.17

WEDNESDAY, the 5th day of November, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Lanigan Northeasterly Branch from the west junction with the Canadian National Railway at

Melfort, Saskatchewan, mileage 82.78, to the end of steel at mileage 83.56, a distance of .78 miles.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35776

In the matter of the various complaints against certain tariffs of the Canadian Pacific and the Canadian National Railway Companies, arising out of the restoration of Crowsnest Pass Rates, so called.

File No. 32812.1

WEDNESDAY, the 12th day of November, A.D. 1924.

S. J. McLEAN, Assistant Chief Commissioner.

A. C. BOYCE, K.C., Commissioner.

Upon the application of Francis H. Chrysler, K.C., of counsel for the provinces of Alberta, Saskatchewan, and Manitoba, for an order directing that the time be extended for leave to appeal to the Supreme Court of Canada from the judgment and order of the Board made in the said matter, and dated the 14th October, 1924; and upon hearing read the affidavit of Philip Harvey Chrysler, filed, in the presence of counsel for the Railway Association of Canada, the Canadian Pacific Railway Company, and the Canadian National Railway Company,—

The Board orders: That the time for leave to appeal to the Supreme Court of Canada from the said judgment and order be, and the same is hereby, extended until the 27th day of November, 1924, or until such later date as may be fixed by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35778

In the matter of the application of Frank Van Ummersen, Agent, New England Freight Association, for permission to publish, on less than statutory notice, supplements to Tariffs C.R.C. Nos. 23 and 29.

File No. 27612.24

WEDNESDAY, the 12th day of November, A.D. 1924.

S. J. McLEAN, Assistant Chief Commissioner.

A. C. BOYCE, K.C., Commissioner.

Upon its appearing that the publication of such supplement is necessary to give effect to proper rates,—

The Board orders: That the said agent be, and he is hereby, authorized to publish and file supplements to Tariffs C.R.C. No. 23 and to C.R.C. No. 29, in lieu of Supplement No. 7 to C.R.C. No. 23 and Supplement No. 2 to C.R.C. No. 29, rejected by the Board and the Interstate Commerce Commission, upon one day's notice.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35782

In the matter of the application of the Great Northern Railway Company, hereinafter called the "Applicant Company," for leave to remove its regular station agent at Baynes, on the Crowsnest Southern Line.

File No. 4205.81

WEDNESDAY, the 12th day of November, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the parties in interest,—

The Board orders: That the applicant company be, and it is hereby, granted leave to remove its station agent at Baynes, in the province of British Columbia.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35797

In the matter of the application of the Wabash Railway Company, hereinafter called the "Applicant Company," for permission to publish rates from stations in Canada to the Atlantic Seaboard, for export, on less than statutory notice.

File No. 33731

MONDAY, the 17th day of November, A.D. 1924

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the so-called "summer" export rates from Ontario points are to be cancelled by other lines effective December 1, 1924, and it being advisable that rates via all lines shall be upon a uniform basis,—

The Board orders: That the applicant company be, and it is hereby, authorized to publish and file tariffs, or supplements, effective December 1, 1924, establishing export rates from Ontario points to the Atlantic seaboard, on the same basis as published by other railway companies operating in the same territory.

S. J. McLEAN,
Assistant Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, December 15, 1924

No. 20

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Complaint of the Township of Malahide against the Canadian National Railways re the township's proportion of 15 per cent of an additional charge of 10 per cent made by the Canadian National Railways in connection with the maintenance and operation of gates at John Street, Aylmer, Ont.

File No. 9437.411

The complainant township asked for a ruling as to whether it was obliged to pay 15 per cent of an additional charge of 10 per cent made by the railway company for the preparation of pay-sheets, cheques, stamps, pensions, etc., in connection with the maintenance of gates directed by the Board to be installed at John street, Aylmer, Ont., by Order No. 12013, dated October 12, 1910.

The order provided, *inter alia*, that the cost of operation and maintenance was to be borne 15 per cent by the town of Aylmer, 15 per cent by the township of Malahide, and 70 per cent by the railway company.

The complaint was referred to the Assistant Chief Engineer of the Board, who reported that the different railway companies had agreed among themselves that 10 per cent was a fair charge to be made against each other for overhead expenses and pensions; that the railway companies proposed to charge municipalities the same percentages on the cost of maintenance and operation; and that this was a fair and reasonable charge.

RULING

The municipality was advised by the Board that it had before it in another connection the question of the 10 per cent charge as a supervision charge, covering supervision, accounting, etc.; that the Board had held that between the railway companies themselves, in matters of protection, the supervision charge of 10 per cent did not appear to be an unreasonable one; and that, therefore, the Board was of opinion that the 10 per cent charge in the present connection was not unreasonable.

OTTAWA, November 28, 1924.

GENERAL ORDER No. 410

In the matter of the complaint of the Vancouver Machinery Depot, Limited, respecting the practice of railway companies in requiring shippers to load and block, brace or stake, for safe transportation less than carload shipments weighing 2,000 pounds or over per piece or package handled in box cars.

File No. 18663.35

WEDNESDAY, the 19th day of November, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Vancouver, June 23, 1924, in the presence of representatives of the applicant company and the Canadian Freight Association, and what was alleged; and upon the report of its Chief Traffic Officer,—

The Board declares: That the present requirement of railway companies that freight, in less than carload quantities, weighing 2,000 pounds or over per piece or package, loaded in box cars by owners, shall, when necessary, be blocked, braced, or staked for safe transportation by such owners, is not unreasonable and may be continued.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 35801

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Peebles Southerly Branch, mileage 0.0 to 22.4, also the west leg of the wye at the junction with its Glenavon Subdivision.

File No. 29411.7

WEDNESDAY, the 19th day of November, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Peebles Southerly Branch from mileage 0.00 to 22.4; also the west leg of the wye at the connection with its Glenavon Subdivision: Provided the speed of trains operated over the said line be limited to a rate not exceeding twenty miles an hour.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 35810

In the matter of the application of the Municipal Council of the Town of Pembroke, Ontario, and the Pembroke Board of Trade, for an Order requiring the construction of interchange tracks between the Canadian Pacific, the Grand Trunk, and the Canadian National Railways, in the Town of Pembroke, as shown on the plan and profile on file with the Board under file No. 6713.50.

MONDAY, the 24th day of November, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Pembroke, March 22, 1923, and in Ottawa, November 4, 1924, in the presence of representatives of the applicants and the railway companies, and what was alleged; and upon the report and recommendation of its Chief Operating Officer and its Assistant Chief Engineer, and reading the further submissions filed,—

The Board orders: That the Canadian National Railway Company be, and it is hereby, directed to construct an interchange track between its railway and the Canadian Pacific Railway, in the town of Pembroke, province of Ontario, as shown, amended in black, on the plan, profile, and book of reference combined dated June 30, 1924, on file with the Board under file No. 6713.50; the whole work to be done at the expense of the Canadian National Railway Company.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 35829

In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement "B" to Express Classification No. 6, on file with the Board under file No. 4397.77.

THURSDAY, the 27th day of November, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Supplement "B" to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.77, be, and it is hereby, approved.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 35834

In the matter of the application of the Canadian Pacific Railway Company, as lessee of the Manitoba and Northwestern Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Tuffnell-Prince Albert Branch from mileage 95.38 to 131.1.

File No. 31043.29

FRIDAY, the 28th day of November, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Tuffnell-Prince Albert Branch from mileage 95.38 to 131.1: Provided that the speed of trains operated over the said line between mileage 95.38 and 127 be limited to a rate not exceeding twenty-five miles an hour, and between mileage 127 and 131.1 at a speed not exceeding fifteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 35831

In the matter of the application of the Central Vermont Railway Company, hereinafter called the "Applicant Company," under Section 428 of the Railway Act, 1919, for leave to prosecute S. Zinman, of St. Johns, Quebec, for alleged fraudulent billing of certain shipments of freight.

File No. 4439.4

SATURDAY, the 29th day of November, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application,—

The Board orders: That the applicant company be, and it is hereby, granted leave to prosecute the said S. Zinman, of St. Johns, in the province of Quebec, for alleged fraudulent billing of certain shipments of freight.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 35835

In the matter of the application of the Montreal and Southern Counties Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway from a point near Main Street, in the Township of Granby, to a connection with the track of the Central Vermont Railway in the Town of Granby.

File No. 33435

SATURDAY, the 29th day of November, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway from a point on its constructed line near Main street, in the township of Granby, to a connection with the Central Vermont Railway in the town of Granby, in the province of Quebec, a distance of 1.33 miles.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 35841

In the matter of the application of the Edmonton, Dunvegan, and British Columbia Railway, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Grande Prairie Branch from mileage 50.19 to 65.42.

File No. 18903.145

TUESDAY, the 2nd day of December, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Grande Prairie Branch from mileage 50.19 to mileage 65.42: Provided the speed of trains operated over the said line does not exceed a rate of eighteen miles an hour.

H. A. McKEOWN,

Chief Commissioner.

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Maritime Freight Bureau, Limited, Sydney, N.S., for a ruling concerning a shipment of window glass moving on through ocean bill of lading from Antwerp to St. John, N.B., Canadian Pacific Railway Company.

File No. 32866

The applicant company asked for a ruling of the Board on the following:—

“A shipment of window glass moved from Antwerp on September 8, 1920, on a through C.P.O.S. ocean bill of lading and consigned through to St. John, N.B., the point of import being Montreal and rail from that point to St. John. Shipment in question arrived at Montreal after the forty per cent increase in 1920, and the railway assessed the increased rates for the inland movement, in view of the fact that the ocean lading showed the inland rates prior to the increase.

“Are we to understand that same was entitled to the reduced inland rate in view of the fact that movement was covered by a through lading from Antwerp to St. John?”

The matter was taken up with the Canadian Pacific Railway Company, which replied that,—

“The shipment of window glass referred to consisted of 195 cases consigned to order, T. McAvity & Son, St. John, N.B., under our bill of lading dated September 8, 1920, issued at Antwerp, from which port the goods were forwarded on the ss. *Montezuma* on September 8. The bill of lading showed the inland rate as 29 cents per 100 pounds from Montreal to St. John, which was 5th class import rate in effect on that date—C.P.R. Tariff E-3266, C.R.C. 3566, and also bore the following stamped clause:—

‘Any increase in inland rate for account of shipper and/or consignee.’

“The shipment was forwarded from Montreal wharf on September 27, 1920, and the rail charges were increased to 40½ cents per 100 pounds in accordance with Supplement 21 to the above tariff, effective September 13, 1920, issued under authority of General Order No. 308, September 9, 1920.

“There is no doubt under the authorities that the date which determines the rate is the date on which the goods are delivered by the water carrier to the rail carrier. See *George Borgfeldt Company v. Southern Pacific, et al*—18 I.C.C., 552.”

RULING

It is understood that the charges on this shipment were made up of a combination of the rate of the ocean carrier from Antwerp to Montreal plus the legally published rate of the rail carrier from Montreal to St. John. It appears a through bill of lading was issued and that there was shown thereon the inland rate as in effect on that date (September 8, 1920), and in addition to this the bill of lading bore the following stamped clause:—

“Any increase in inland rate for account of shipper and/or consignee.”

Subsequent to date of issuance of bill of lading, viz., on September 13, 1920, there was an increase in the rate from Montreal to St. John, and the shipment went forward from Montreal on September 27, 1920.

The ruling of the Board is that being without jurisdiction over ocean carriers from ports in foreign countries to ports of entry into this country, the Board can only recognize the legally published rate as on file with the Board and in effect at the time the shipment was forwarded from port of entry to destination.

The Board having no jurisdiction over ocean carriers has no authority to express any opinion as to the construction of a contract made in a foreign country, and, therefore, does not express anything as to the construction of the terms of the said contract.

OTTAWA, October 15, 1923.

Application of the Foremost Board of Trade, the East End Board of Trade, the Shaunavon Board of Trade, the United Farmers of Alberta, Local Union 27 et al., for a daily passenger service between Lethbridge and Moose Jaw, on the Lethbridge-Weyburn Branch of the Canadian Pacific Railway.

File 27563.56.9

JUDGMENT

McLEAN, Assistant Chief Commissioner.

Recommendation is made for the establishment of a passenger, mail and express service between Moose Jaw and Lethbridge on three days of the week. At present, there is a service six days a week, Moose Jaw to Shaunavon. What is proposed is that on three days of the week there should be a service through from Shaunavon to Lethbridge.

From Shaunavon to Moose Jaw is 184 miles. The distance from Shaunavon to Lethbridge is 225 miles. A round-trip service three trips a week, each way, between Shaunavon and Lethbridge would mean 1,350 train miles per week, or 70,200 passenger train miles per year.

The details presented at the hearing show that there is a very urgent desire to have an improved train service, and it is urged that increased train service would greatly increase the earnings. Reference is made to the difficulties of transportation at present, on account of the limited tri-weekly service on mixed trains and lack of through connections; and it is stated that much travel is now moving by motors which would otherwise move by train. It is further stated that in certain sections traffic is finding its way south to the American lines which otherwise would be handled by the Canadian Pacific.

While one cannot but be sympathetic with the claims so urgently put forward, there must be borne in mind the limitations of the powers conferred by the Railway Act.

As was pointed out in the application of the District and Board of Trade of Coalhurst, Alta., for station facilities,—Board's Judgments and Orders, Vol. XIII, p. 261, the railway in connection with its operation takes the responsibility of profit or loss. The Board, under the Railway Act, has no profit or loss responsibility and its intervention in the matter of rates must be concerned with matters falling within the broad categories of reasonableness and unjust discrimination, and not the policy of developing industries through rate adjustment.

The same judgment continues to point out that in regard to the matter of operating railways and the provision of facilities in connection with the handling of traffic, the Board is not empowered by Parliament to make the operating schedules in the first instance, thereby taking over the management. Under the scheme of the Railway Act, the initiation of the operating policy is in the hands of the railway and the action of the Board comes in as corrective and remedial.

At times, in connection with questions of train service, the Board's attention is directed to services afforded by the railway in other sections, which services are often alleged to be less profitable than those which the railway may desire to curtail, and in such connection the Board is at times asked why should not the service alleged to be less profitable be curtailed.

This leaves out of consideration the fact that the railways have a discretion to create services and install rates in connection therewith, with the intention of developing traffic. The Board's powers are more limited. As pointed out, it has not the profit or loss responsibility of the railway. The management of the railway is not handed over to the Board, and, consequently, it is not empowered to put in rates and services with the intention of developing traffic, unless it has reasonable satisfaction that at least the cost of operation will be met in connection with the service installed.

In the present instance, the railway submits figures showing passenger receipts between Lethbridge and Manyberries during April and May, 1924, on trains Nos. 641 and 642. The service afforded is a mixed train service. The detail given shows a total of \$2,450. The distance between these two points is 103.7 miles. To earn this revenue, 53 trips were necessary; that is, a mileage of 5,512, or passenger earnings of 44.4c per train mile. It is to be remembered, of course, that this is traffic carried on a mixed train and that, consequently, it is not the necessary measure of the earnings of a passenger train.

The railway submitted statements showing that during the months of April, May and June there was a net loss on the passenger business on these trains amounting to \$2.29 per train mile. The figures as given were \$2.99 for the month of April, \$2.67 for the month of May; and \$2.87 for the month of June.

The caution is necessary, as already pointed out, that these figures are in regard to a limited traffic carried on a mixed train service. At the same time, they must be given some weight in connection with a computation of the earnings of traffic likely to be obtainable.

A detailed statement of cost submitted for April, 1924, for trains Nos. 641 and 642 between Lethbridge and Manyberries shows a total cost of \$9,501.69, or \$3.51 per train mile, with a computed net loss of \$8,082.84. For May, the figures are \$8,420.52 and \$3.00 respectively, with a computed net loss of \$7,495.52. For June, the figures are \$8,420.52 and \$3.37 respectively, with a computed net loss of \$7,067.31. The form of cost tabulation is the same as was submitted in the application of the Board of Trade of Lethbridge, et al, for the restoration of a daily daylight train service between Medicine Hat and Cranbrook—File 27563.56.14. This case was decided in February, 1924.

In the Lethbridge Case application above referred to, the Board had before it figures showing that the maximum passenger train-mile earnings to be

expected were 77 cents. An estimated statement of cost of operation for a 31-day month of the local train between Medicine Hat and Cranbrook was put in showing a total cost per train mile of \$1.28.

In rendering judgment, the Board drew attention to the fact that the latest average figure of passenger train-mile earnings then available for the Canadian Pacific Railway, viz., for the period from January to November, 1923, showed passenger train-mile earnings of \$1.82; and it was held that estimated earnings varying from 30 cents to 77 cents being so far below the general average above given did not justify the Board in giving the increased passenger train service asked for.

At the hearing, exception was taken to the figures for April and May as filed, not as being inaccurate in themselves but as not being characteristic since they were for a period when the traffic movement was lighter. At the same time, they, with the June figures already referred to, are all that are definitely before the Board and available as a base for computation and comparison.

A computation made for the movement both ways between Lethbridge and Manyberries for April, 1924, shows total earnings for passengers, baggage and express amounting to 79.3 cents per train mile. If there is included the earnings for carrying mail, this brings the total up to 84.1 cents per train mile. Against this may be checked the computed train-mile cost of \$3.51. For May, the earnings thus computed are 57.7 cents as against a computed cost figure of \$3; while for June the respective figures are 73.2 cents and \$3.37.

The figure of \$1.82 per passenger train mile, for the Canadian Pacific already quoted, relates to passenger services alone, excluding mail and express. The corresponding figure for the full year of 1923 is \$1.87.

The proposed service embraces mail and express in addition to passenger alone and earnings therefrom are considered.

For the year ending December 31, 1923, the Annual Report of Railway Statistics gives figures which enables the earnings per passenger train-mile of the Canadian Pacific Railway to be computed as \$2.58—this includes earnings from express, mail, etc. The operating ratio for the year being 80.41 per cent, this gives a cost figure per passenger train mile of \$2.07.

As already pointed out, the proposed additional passenger train service between Shaunavon and Lethbridge would mean 70,200 additional passenger train miles per year.

If there are disregarded the higher train-mile costs for this section, as filed at the hearing, and if there are instead applied the lower average passenger train-mile costs of the system in general, the 70,200 additional passenger train miles would mean additional costs of \$145,314 per annum. The average fare per passenger on the Canadian Pacific Railway paid during the year 1923 was \$3.42. On this basis, the cost figure of \$145,314 would require 42,489 passengers.

Provision for profit would require some addition to this number.

It is appreciated that as these computations are based on averages, exceptions may be taken thereto. At the same time, with earnings, so far as they are able to be computed, falling so far below the general average, the Board would not be justified in directing the installation of a service for which there is not apparent a revenue sufficient to counterbalance cost as a minimum. November 19, 1924.

Commissioner Boyce concurred.

COMMISSIONER OLIVER:

A hearing was given in this matter by the Board sitting at Lethbridge, Alta., on July 9, 1924; Dr. S. J. McLean, Assistant Chief Commissioner presiding; present Commissioners Boyce and Oliver.

F. E. Wright and E. E. Hay of East End, Sask., appeared for the East End and Govenlock Board of Trade, and also represented other towns in Saskatchewan west of Shaunavon.

S. P. Albertson represented the Foremost Board of Trade;

D. Morris appeared for the Etzikom Local U.F.A., No. 27, and the Orion Board of Trade;

S. J. Shepherd, K.C. (President), appeared for the Lethbridge Board of Trade;

D. W. Clapperton (solicitor) and Mr. J. L. Jamieson (superintendent Lethbridge Division, which includes the line from Lethbridge to Shaunavon) appeared for the Canadian Pacific Railway Company.

Mr. Wright made the first statement for the applicants, in substance, as follows:—

The country in the neighbourhood of East End and Govenlock has been settled up for fifteen or twenty years, in fact before the settlement east of Shaunavon. There were nearly as many people in the district fifteen years ago as to-day. Settlers waited a long time for the railway and now suffered because of the service given. Owing to the stop-over at Shaunavon, the mail service was very unsatisfactory. A letter mailed at East End after 2.30 on Thursday afternoon had only travelled 23 miles by 8.30 Monday morning. Perishable fruits from British Columbia, owing to the slow train and the stop-over at Manyberries, frequently arrived in such poor condition that merchants preferred not to bring them in. The Canadian Pacific Railway agent at East End had told Mr. Wright that from one third to one half was spoiled. Farm machinery repairs came from Regina; there were hundreds of binders and threshers at work in the season and repairs were urgently needed from time to time. A repair wired for on Saturday could not reach East End until the following Wednesday; while waiting for it the harvest or threshing gang must stand idle but under pay. The road distance to Regina is 284 miles; repairs are brought by motor in two days. Usually the trip to Regina is made by motor from East End to the C. P. R. main line 50 to 55 miles, after 9.30 in the evening; Regina is reached the next morning. Cream consigned to Shaunavon Creamery is lowered in grade because of damage resulting from the slowness of the train. Farmers on the Climax Branch ship cream by motor truck to creameries on the Great Northern in Montana.

Mr. Wright said:—

"We want to call your attention to the amount of car travel from that line that should go by train. I have a few moments ago prepared a list of names of people that I know personally, who left East End and motored a distance of approximately 75 miles to the Great Northern, South, since October last fall, travelling west to the Coast, to Los Angeles or some place in California or Washington. This list numbers 84 people. I do not know how many more there were, but I have an actual list of that many names. The same thing applies if we want to go east".

"COMMISSIONER BOYCE,—You still contend that a daily train service would pay"?

"MR. WRIGHT: The point I am making is that the train is not used as it is now run."

"When Mr. Hay and I looked up the time table and compared it with the trains we could catch on the main line, we decided the only thing we could do was to drive by motor. The distance is some 230 miles from East End; . . . We made the trip quite comfortably in one day."

Mr. Hay supported the statements made by Mr. Wright. In reply to the suggestion by Mr. Clapperton that most people travelled by automobile from choice, he said that a majority of the people have not cars, and therefore must travel by train. If a more convenient service were given, a great many more people would use the trains.

Mr. Albertson stated that mail and express from eastern points came around by way of Lethbridge to Foremost because it can be handled more quickly that way than by the direct line. Travelling from Weyburn to Foremost by direct line, he found it took longer than around by way of the main line, with the back-haul from Lethbridge. He said:—

“I have had to make the trip here in a car, because it would have taken four days to come up and return on the train. It would spoil four days to be here at ten o'clock to-day. It would take four days to go 72 or 73 miles and return. We are 34 miles from the International Boundary and 28 miles from Burdett. Now these people drive across to the main line to take the train for points east and west. To go to the States people drive to Sweet Grass and to Haddow to take the (Great Northern) train.”

The shortened running time put into effect on May 18 had not resulted in material benefit to Foremost.

Mr. Morris, of Etzikom Local, U.F.A., believed that the new time schedule had materially improved both the mail and express and the passenger service, but they were not perfect. He said:—

“I will cite my own experience as an instance: I came up here yesterday (Tuesday). We arrived at about three o'clock (83 miles). If we had a daily service we could get back to-morrow. As we have not, I have to wait until Friday.”

Mr. Shepherd, on behalf of the Lethbridge Board of Trade, endorsed the application of the representatives from East End and other points. He said:—

“The service is undoubtedly a very bad service. We think the country has been populated long enough and there are enough people in the country to warrant a better service than they are getting. The train, as I understand that it is operated, is a freight train, with passenger coach attached. If a passenger service were put on, it would not interfere with the freight service. The train is a freight train and there must be freight there or the railway company would not be operating this large freight train. It is a great inconvenience in the development of the country.”

“From our standpoint in Lethbridge, yes, I would like to have a through train service; a real railway service; a service that is a service, because a service can be so bad that it is of very little benefit and none of the people can patronize it. If they cannot get a steady and regular service it is really not much good to them. They have got to have a reasonably good service for the company itself to make money. I mean the service can be so bad that it is not much good to anyone. As this train is, from the standpoint of a passenger, it is not much good to the people.”

In reply to a question as to how a tri-weekly through service would be received if the westerly division were covered at night, Mr. Wright said:—

“They would certainly prefer to have a night service than what we have at the present time.”

Mr. Albertson said:—

“We would like a daily passenger train; we would like it in daytime, but if we cannot get it, we would rather have it at night.”

Mr. Shephard said:—

“We would regard a daily service, no matter at what hours, as better than we have now.”

In reply to the question, “Would you agree to the night service if that is all you could get?” Mr. Shephard said “Yes.”

A letter on the Board's file from J. H. Duncan of Manyberries, dated July 4, was read at the hearing. It set forth that at a meeting of practically all the business men of the town on that date, they were unanimously in favour of the existing schedule. The letter stated further that there was no Board of Trade at Manyberries, and went on to say: “It is just possible that another year something could be done by way of chilled car for cream if the situation warranted. And if things improved enough, you might rearrange your schedule at some future date, on, a year or so”.

A letter to the Board from W. S. Gale, Secretary of the Ravenscrag Board of Trade, dated July 5, gives a list of twelve persons recently leaving Ravenscrag and vicinity by motor for Havre, Montana, on the Great Northern, on their way to United States points, as far west as Portland, Oregon, and as far east as Chicago; also a list of four persons going to distant points by motor to Maple Creek and Carmichael on the Canadian Pacific Railway main line. Mr. Gale says:—

“Practically every one who has travelled in past years has avoided this branch, it being even cheaper to hire a car and drive the 60 miles than to lay over”.

J. Ross Clark, secretary-treasurer, and Russell Kennedy, overseer, of the village of Consul, wrote to the Board under date of July 4, as follows:—

“As it is now, many persons drive across to the main line on the north and more particularly to the Great Northern on the south. We believe a through daily train would be a paying proposition to the railway company, and we believe we are entitled to a daily train with daily mail and without stop-over”.

E. John Evans, of Evans Brothers, merchants, of Senate, Sask., in a letter on the Board's file, states that there is no Board of Trade at Senate, but he writes the East End Board of Trade for the purpose of giving assurance that,—
“The district is behind you in your efforts”. Mr. Evans says:—

“There are not more than about five passengers a week at this point, due of course to the present train service, but there would be from fifteen to twenty-five each week if a daily service was operated.”

“I know that 90 per cent of the people who are bound from this district to outside points go over to Montana, Havre being the city for which most of these people going west or south make for, while those going east or north are driven over to Maple Creek.”

“During the past six months I myself have driven over to Maple Creek three times with from two to five members of my family and relations, who were bound either for Winnipeg or Vancouver”.

“One of the most important points is the deserting of the country which is not only being brought about by drouth, but due to the fact that married men with families, some member of which may have a chronic sickness, will not stay here due to the impossibility of getting such a patient to a hospital within, as sometimes happens, three days. Most of the younger people growing up, leave the district for the same reason. A poor train service is almost death to a community”.

Inspector Shinnick reported under date of April 28, 1924, that from September 1, 1920, to the date of his inspection in early April, over six and a quarter million bushels of grain had either been shipped from or was in elevator storage at points between Stirling, 20 miles from Lethbridge, and Shaunavon (including the Climax Branch); also that from 1,800 to 2,000 gallons of cream per month were shipped to Lethbridge and Shaunavon during the season of greatest production.

Mr. Clapperton, solicitor, appearing for the Canadian Pacific Railway Company, said:—

“Our position is simply that the business does not warrant the service”.

He presented statements of the passengers carried and the receipts on trains 641 and 642, operating between Lethbridge and Manyberries, during April and May, 1924:—

	April	May
Lethbridge to Manyberries.. . . .	\$ 773.00	\$506.00
Manyberries to Lethbridge.. . . .	521.00	450.00
Total.. . . .	<u>\$1,294.00</u>	<u>\$956.00</u>

He also submitted a statement of costs of operation of trains 641 and 642 between Lethbridge and Manyberries for April, \$9,501.

Mr. Jamieson, for the Railway Company, submitted costs sheets for April, May and June, and said:—

“Our position, sir, is that during the months of April, May and June, we have incurred a net loss, in the passenger business of \$2.29 per train mile. The net loss shown in the summary on the basis of the sheets; \$2.99 per train mile in the month of April; \$2.67 in the month of May, and \$2.87 in the month of June. While these figures are not exact, they are rough, it means that if we put on a separate passenger service, as asked for, an exclusive passenger service, that we would lose somewhere near these amounts. Agreeing for the moment that the traffic might increase, as suggested by Mr. Wright and yourself, agreeing that it would increase, it would not increase enough to anything like offset the difference between the passenger car mile earnings and the amount of loss.”

Messrs. Wright and Morris asserted strongly that an accounting of earnings for April and May was not a fair representation of the earnings of the year, as these were the months of lightest traffic both freight and passenger; November, December and January were the months of holiday travel, if railway facilities were suitable.

A reference to the time table shows that the distance between Lethbridge and Moose Jaw, by way of Shaunavon, is 410 miles. From Lethbridge to Manyberries is 103.7 miles. There is a train on Monday, Wednesday and Friday, leaving at 8.45 a.m. and arriving at 6 p.m. From Manyberries to Shaunavon, 122 miles, there is a train on Tuesdays, Thursdays and Saturdays, leaving at 6.45 a.m. and arriving at 4 p.m. From Shaunavon to Moose Jaw, 184 miles, there is a train each way on six days a week, leaving Shaunavon at 8.40 a.m. and arriving at Moose Jaw at 4.55 p.m.

Westbound, the train leaves Moose Jaw at 9.50 a.m. and arrives at Shaunavon at 6.20 p.m. On Mondays, Wednesdays and Fridays, it leaves Shaunavon at 7.40 a.m. and arrives at Manyberries at 6 p.m. On Tuesdays, Thursdays and Saturdays, it leaves Manyberries at 7 a.m. and arrives at Lethbridge at 2.30 p.m.

Through travel between Lethbridge and Moose Jaw by this line means a minimum stop-over of one night each at Manyberries and Shaunavon. East-bound passengers by Friday's train from points on the Manyberries division

would have to stop over two nights and a day at Shaunavon. Westbound passengers from points between Moose Jaw and Shaunavon, leaving on Friday's train, would have to stop over three nights and two days at Shaunavon, and leaving on Monday's, Wednesday's or Saturday's train, they would have to stop over two nights and one day.

The Climax Branch, which extends easterly from Notukeu, 60 miles to Climax, between the Lethbridge-Moose Jaw line and the international boundary, on which steel was laid early in 1923, has no time table of passenger service. Whatever disadvantages in passenger, mail or express service exist on the Manyberries-Shaunavon division of 122 miles, are suffered in even greater degree by residents along the Climax Branch of 60 additional miles.

In my opinion, the facts brought to the attention of the Commission establish,—

1st. That the present passenger, express and mail service between Lethbridge and Shaunavon is unsatisfactory and inadequate.

2nd. That it is of such a character as to be a serious burden on the endeavours of the present settlers.

3rd. That it tends to unduly hinder and delay the development of the district assumed to be served.

4th. That because of the insufficiency of the service, a great deal of business is directly lost to the Railway Company that could be saved if a through passenger service between Moose Jaw and Lethbridge were established under conditions similar to those under which the service between Shaunavon and Lethbridge is now operated.

I cannot find in the evidence submitted that the contention by the representatives of the railway company that "the business does not warrant the service" asked for is adequately supported. The fact that the passenger earnings for the two divisions between Lethbridge and Shaunavon (including the Climax Branch), were only \$1,294 during April 1924 (one of the months of lightest travel) obviously cannot be accepted as proof of what the average monthly earnings of a through service would be. The statement that nearly all through passengers went to either the Great Northern or the Canadian Pacific Railway main lines, and that cattle were driven across country to the Great Northern was specifically admitted by Superintendent Jamieson. It was stated and not denied that the cream produced along the Climax line went to the Great Northern by motor truck. In my opinion the fact that the population had produced and shipped six and a quarter million bushels of wheat of the crop of 1923, up to April 1, 1924, and the further fact that their cream shipments (exclusive of the Climax line), amounted to 1,800 to 2,000 gallons a week during the high production period of the cream season, and that they have large cattle shipments as well is ample evidence that there is population and production along the line in question, sufficient to warrant the establishment of a through passenger service, on a fair comparison with other localities now receiving such service.

It may be pointed out that the report of train earnings submitted by Superintendent Jamieson gives no credit for the value of the transportation sold beyond the limits of the subdivision to which the return applies—that is beyond Lethbridge or Manyberries as the case may be. For instance, in the details of earnings of the train of April 5, a ticket sold from Manyberries to Edmonton is only credited as earning \$3.55, while the fare to Edmonton is \$14.65; a ticket sold from Foremost to Winnipeg (\$24.20), is only credited as earning 65 cents. If the total value of the tickets actually sold at points on the subdivision had been credited, the return would have been considerably greater, even if no more tickets had been sold.

While it is a fact that in the case of passengers from points between Manyberries and Lethbridge, who purchased through tickets at points on the main line, the same company which operates the Lethbridge-Moose Jaw line got the benefit of these purchases, and the amounts were credited to other parts of the system, it is also a fact that in the case of passengers purchasing tickets over the Great Northern line, the Canadian Pacific Railway did not get the benefit of any part of the price of the ticket; whereas had there been a through service from Lethbridge to Moose Jaw, the Canadian Pacific Railway would have received either all or the greater part of the full price of these tickets, according to destination. This amount would have been added to the gross earnings of the company, and was actually lost to the company because of lack of the through service asked for. It must be obvious that the earnings of a service which by reason of its character, adds materially to the earnings of a rival railway or to those of another section of the same railway system, cannot be fairly set up as a measure of what the earnings of an improved service would be.

It is to be understood that through passengers purchasing tickets at Canadian Pacific Railway main line points, as well as these purchasing on the Great Northern, had to bear the expense of motor transportation to those points. At a rate of 20 cents per mile, the motor charge would run from eight to fifteen dollars. It might be less but would quite as apt to be more. Whatever the amount, it was a burden on the passenger that he would not have had to bear if there had been a through service on the line nearest him, which was presumably chartered and built to give him accommodation as to personal travel as well as in express, mail and freight service.

The adverse conditions as to passenger travel, which keep down earnings because of the lack of a through service, affect with equal or even greater force the express traffic, therefore, the present express earnings are not more a fair measure of what a through service would earn, than are the present passenger earnings.

While the earnings of the railway from the mail service are probably not affected by its character, its value to the public undoubtedly is. It would be impossible to estimate the business disadvantage and therefore loss resulting from such a slow mail service, but it cannot be otherwise than very great; besides the direct loss resulting from increased motor travel and increased telegraphing that would not be necessary if there were a through mail service.

For these reasons my opinion is that the figures submitted by the railway company in support of their contention that the business now being done does not warrant an increased service, have no proper bearing on the case.

I cannot therefore endorse the conclusion of Chief Operating Officer Spencer in his report to the Assistant Chief Commissioner. Mr. Spencer reports that:—

“In my opinion the revenue reported by the company is not nearly sufficient to justify a straight passenger train between Manyberries and Lethbridge.”

The application before the Board is for a daily passenger, express and mail service between Lethbridge and Moose Jaw. The question to be decided is not what measure of improved service the present earnings of the train between Lethbridge and Manyberries would warrant, but whether the conditions of settlement and production along the line warrant the replacement of the present disjointed service by a through service; having reasonable regard to the requirements of the people on one hand, and of the railway in the matter of revenue on the other.

In reply to a question by the Assistant Chief Commissioner, Superintendent Jamieson said that during the three months of April, May and June there had been a net loss in passenger business on the Lethbridge-Manyberries division of \$2.29 per train mile.

The sheets of cost figures submitted by Mr. Jamieson show that the number of train miles operated between Lethbridge and Manyberries during April, 1924, was 2,704 and the total cost \$9,501.69, equal to \$3.51 per train mile.

The gross passenger and express earnings for April are given as follows:—

Passengers Manyberries to Lethbridge.. . . .	\$ 521.66
Passengers Lethbridge to Manyberries.. . . .	773 77
Baggage both ways.. . . .	18 25
Express both ways.. . . .	842 31

Total earnings, passengers, baggage and express, for April, both ways between Lethbridge and Manyberries.. . . .	\$2,155.99
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This total does not include earnings for carrying mail, which should be included. The amount paid for mail carriage between Lethbridge and Manyberries during April was \$119.80. This would bring the total earnings of the division, exclusive of freight up to \$2,275.79, while the total cost of operating the trains for the month was \$9,501.69.

Crediting the two passenger and express cars with a total earning for the month from passenger, baggage express and mail service of \$2,275, it would appear that the train earnings exclusive of freight were .84 per train mile, or nearly 24 per cent of the total cost of the whole train, freight as well as passenger, express and mail.

Inspector Shinnick in his report of April 26, stated that the mixed train on these divisions sometimes handled as high as fifty cars of freight and he recommended that an order of the Board be made limiting the number of freight cars that might be handled on a mixed train to twenty-five. There would seem to be no warrant for charging the difference between the total cost of the train, averaging say 27 cars (25 freight, one passenger and one express), against the earnings of the two latter cars only. The cars of freight handled should at least bear their fair share of the cost of operating the train. The cost per train mile being \$3.51, that amount should be divided equitably among all the cars that composed the train. If there were an average of 27 cars in each train, each car should be charged with the twenty-seventh part of the total cost of the operation of the train. Supposing instead of the whole 27 cars being charged equally, the passenger and express cars were charged as five, instead of as two, one-sixth of the total cost of the train service would be chargeable to the passenger and express, and five-sixths to the freight. On that calculation, instead of the passenger and express service being properly charged with the whole \$9,500, they should only be charged with \$1,583, and the balance of \$7,917 should be charged against the freight. In that case instead of the passenger, express and mail service showing an overwhelming loss on cost of operation, it would show a very substantial profit.

My opinion is that the circumstances now within the knowledge of the Board amply warrant an extension of the passenger mail and express service now operated between Moose Jaw and Shaunavon to Lethbridge, on three days of the week. The run from Moose Jaw to Shaunavon, 184.5 miles, is made in 8 hours and 10 minutes, or at a rate of slightly under 23 miles an hour. The distance from Shaunavon to Lethbridge is 225.7 miles. At the same rate as the train is now operated between Moose Jaw and Shaunavon, that run would take ten hours, or a total of eighteen hours between Lethbridge and Moose Jaw. At present the run between Shaunavon and Moose Jaw is by daylight both ways. No doubt the people along that line would object to a change from day to night service, but they could not reasonably object to such alteration as would give the best service possible to the westerly end of the run, with the least possible measure of disadvantage to them. On the other hand the representations made by the applicants for the western section agreed that a night run on that section would be acceptable to them as an improvement on present conditions. A train

leaving Moose Jaw at 6 a.m. and running 23 miles an hour, could reach Lethbridge at midnight, and a train leaving Lethbridge at midnight would reach Moose Jaw at 6 p.m.

I find on reference to the Canadian Pacific Railway time table that the local trains between Lethbridge and Medicine Hat have an average speed of 27 miles per hour, and that the Canadian Pacific Railway trains on the branch line between Winnipeg and Edmonton and on the line between Calgary and Edmonton, have about the same time per mile. A rate of 27 miles per hour between Lethbridge and Moose Jaw would reduce the gross time of the run to slightly over fifteen hours. At that rate a train leaving Moose Jaw at 7 a.m. would reach Lethbridge at 10 p.m. and a train leaving Lethbridge at 6 a.m. could reach Moose Jaw at 9 p.m.

I beg respectfully to recommend that a fifteen-hour service (passenger, express and mail) on three days a week be established between Lethbridge and Moose Jaw with such hours of starting as will best suit the convenience of both the people directly concerned and the railway company. Also that a mixed train be operated on the Climax branch on such time table as will give the most advantageous connection with the through trains at the junction of Notukeu. Also that the present mixed train service on the two divisions between Lethbridge and Manyberries be retained.

OTTAWA, August 13, 1924.

In the matter of the application of Messrs. N. Rattenbury & Company for an extension of industrial spur at Charlottetown, P.E.I.

File No. 33697

JUDGMENT

Hon. H. A. McKEOWN, *Chief Commissioner*:

The object of this application is to compel the Canadian National Railway Company to extend an industrial spur from its main track a further distance along a thoroughfare known as Peak street or Lower Water street, in the city of Charlottetown, P.E.I.

No serious objection to the extension was made by the officials of the railway company, but certain legal complications were shown to exist, challenging the actual status of the thoroughfare as a public highway, and actions were threatened against the railway company by frontagers along the route of the proposed extension, in case it proceeded to do the work asked for.

In view of the unwillingness of the applicants to secure to the railway company immunity from legal trouble in case such extension were made, the railway company declined to extend the spur under existing conditions, and being pressed to do so, it now raises the question of the Board's jurisdiction to direct such work to be done by the Canadian National Railway Company.

I agree with the legal position taken by counsel for the railway company, namely, that the jurisdiction of this Board over Government railways extends to operation, and not to construction and maintenance, and for that reason I think this application will have to be dismissed; and in so ordering I would draw attention to the fact that the railway company has no objection to this extension other than the legal complications which might arise from such action upon its part, and I have no doubt that if those who would be served by the proposed extension would clear away the legal difficulties, their wishes will be met by the railway company.

The application for extension must be dismissed.

OTTAWA, December 6, 1924.

Application of the Canadian National Railways for authority to dispense with the services of the watchman at Main Street crossing, Gladstone, Man., and protect same by an automatic flagman, and for approval of amended plan showing changes in track circuit; also that the Canadian Pacific Railway Company bear and pay one-half of the cost of the charges after a grant from the Railway Grade Crossing Fund.

File No. 9437.732

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner:*

This application was presented to the Board of the month of March last, and being met by objections filed on behalf of the town of Gladstone, the matter was laid over to give opportunity for an examination of the locality by the Board's Engineer, and by others in interest.

It was noted for hearing at the sittings of the Board at Winnipeg, on the 21st day of November last, all parties being notified. Representatives of the Canadian National Railways and the Canadian Pacific Railway were heard in discussion, not upon the advisability of the suggested change but upon the question of proportionate expense to be borne by each company, assuming such change were made.

The town of Gladstone was not personally represented at the hearing, but it filed a communication in which its objection to the change was reiterated and relied upon the report of the Board's Engineer in support of its position.

A number of things must be considered in deciding whether better protection is afforded by automatic signal or by the personal attendance of a watchman. Regard must be had to the locality affected, to the number of tracks to be crossed, to the amount of railway service at the point of crossing, to the volume of vehicular and pedestrian traffic at that place, to the nature of the approaches thereto, to the degree of visibility thereat, and to the general conditions prevailing. I do not think any hard and fast rule can be laid down which will apply to all applications of this nature. It is manifest that in some places conditions are such as to make it beyond the power of any watchman, however careful, to afford complete safety, and automatic devices under such conditions are imperative.

The Board's Engineer made a personal inspection of this locality and is of the opinion that conditions do not at present justify the change asked for, and that this crossing is not a good locality in which to put in an automatic flagman. For the present, therefore, this application is refused.

Commissioner Oliver concurred.

OTTAWA, December 6, 1924.

Application of the Canadian Pacific Railway Company for authority to close the agency at Lardeau, B.C.

File No. 4205.284.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner:*

Some time ago application was made by the Canadian Pacific Railway Company for authority to remove its agent from Lardeau, B.C., on the company's Lardeau Subdivision.

Lardeau Station is at the north end of Kootenay lake, which is connected with Trout lake by a railway thirty-three miles long, Gerrard being the Trout Lake terminus. Lardeau is the only railway station on the Lardeau-Gerrard line, and from the fact that it is a lake terminus at which all freight and passenger traffic is exchanged between boat and railway, it seems to me to

necessitate a responsible agent being stationed there to facilitate the transfer, otherwise there would be no point of contact at all in that locality between the railway and its customers, who produce the traffic.

The earnings of the Lardeau-Gerrard line for the year ending July 31, 1924, were somewhat over fifteen thousand dollars, but during the preceding twelve months the line earned nearly five times that amount.

The withdrawal of the agent at this station would necessitate business being done at some other point, and it is suggested that it could be done by telephone from Kaslo, a point twenty miles distant. The objection to that, however, is that Kaslo is not on the main line, and it probably would not answer the purpose in many instances. The nearest points on the main line are Nelson and Kootenay Landing distant, respectively, about seventy and seventy-five miles by steamer.

For these reasons the Board is of the opinion that the application for authority to close this agency should be dismissed.

Commissioner Oliver concurred.

OTTAWA, December 6, 1924.

Re Supplement No. 15 to Canadian Freight Classification No. 16, also proposed Canadian Freight Classification No. 17—Complaint and application of the Manitoba Liquor Control Commission; the Western Druggists' Supplies Company, Limited, of Regina (Government Liquor Vendors); and the Government of the Province of Alberta.

File No. 33365.26

JUDGMENT

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

This case was heard at Winnipeg on the 20th day of November, 1924.

The complainants have put forward that the present classification specifies too high a rate for the carriage of liquors under the conditions now existing. It is pointed out that these charges are based upon an estimate which involves very considerable outlay for policing the freight carried, and it is contended that the conditions which rendered that course necessary at the time the classification was made no longer exist.

Much evidence was adduced to show that the loss by pilferage has very materially decreased, and the deduction we are asked to draw therefrom is that little danger is to be apprehended at present or in future on this account. We do not think this result necessarily follows, but are rather inclined to the view that the present immunity from theft is the result of the very large outlay necessitated by the extra care taken to secure safety for this class of freight and, in our view, the relaxation in police service would more likely be followed by an increase in loss of such goods in transit. The evidence convinces us that the expense incurred has produced the result to which it was directed, but from that fact it by no means follows that a lessened degree of care in this regard would not be followed by a renewed outbreak of the evil which the extra policing has been successful in almost wholly eliminating. Until conditions warrant a different conclusion, we think the present classification should stand.

The application is, therefore, refused.

Commissioner Oliver concurred.

OTTAWA, December 6, 1924.

In the matter of various complaints against certain tariffs of the Canadian Pacific and the Canadian National Railway Companies, arising out of the restoration of Crowsnest Pass Rates, so called;

And in the matter of the General Order of the Board No. 408, dated October 14, 1924, disallowing such tariffs, and the application for leave to appeal to the Supreme Court of Canada.

File No. 32812.1

JUDGMENT

Hon. H. A. McKEOWN, *Chief Commissioner:*

Notice of intention to apply for leave to appeal to the Supreme Court of Canada from the judgment of the Board of Railway Commissioners in this matter, on questions of law or of jurisdiction, or of both law and jurisdiction, was given on behalf of the provinces of Alberta, Saskatchewan, and Manitoba, and at the same time notice was also given that, at the time of such hearing, a further application would be made to the Board, under section 52 of the Railway Act, for an order extending the time within which to appeal from the order of the Board.

At the hearing, the time within which to obtain such leave was extended until the 10th day of December, 1924; and pursuant to the application for leave to appeal to the Supreme Court of Canada, questions both of law and jurisdiction were submitted and supported by argument of counsel representing the different interests involved. Such questions so submitted have had the careful consideration of the Board.

It is the opinion of the Board that the issues involved should be submitted for determination by the Supreme Court, and the questions proposed by counsel have been examined and made use of, with the object of covering all points in issue between the parties, as far as the same are involved in the Board's decision in this matter.

In the opinion of the Board the subjoined questions should be submitted for the consideration of the Supreme Court as questions of law and jurisdiction, namely:—

1. Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize railway rates upon the railway of the Canadian Pacific Railway Company in excess of the maximum rates referred to in the Crowsnest Pass Act, being chapter 5, 60-61 Victoria, Statutes of Canada, and in the agreement therein referred to, upon the commodities therein mentioned.

2. If the court shall be of opinion that the Crowsnest Pass Act or Agreement is binding upon the Board of Railway Commissioners for Canada, then, according to the construction of the Crowsnest Pass Act, section 1, clause (d), and the agreement made thereunder—

(a) Are the rates therein provided applicable to traffic westbound from Fort William and from all points east of Fort William, now on the Canadian Pacific Railway Company's railway; or, are such rates confined to westbound traffic originating at Fort William and at such points east of Fort William as were at the date of the passing of the Act and (or) the making of the agreement on the company's line of railway?

(b) Are such rates applicable to traffic originating at points east of Fort William which were, at the date of the passing of the Act, and (or) the making of the agreement, on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company?

- (c) Are the rates therein provided applicable to traffic destined to points west of Fort William which are now on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company? or
- (d) Are such rates confined to traffic destined to points west of Fort William which were, at the date of the passing of the Act, or the making of the agreement, on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company?

3. Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize rates upon the Canadian Pacific Railway on grain and flour, from all points on the main line, branches or connections of the company west of Fort William, to Fort William and Port Arthur, and all points east, beyond the maximum rates specified in the Crowsnest Pass Act and Agreement, and referred to in chapter 41, Statutes of Canada (1922).

OTTAWA, December 6, 1924.

Assistant Chief Commissioner McLean and Commissioner Boyce concurred.

Application of the Quebec Railway, Light, Heat and Power Company, Limited, for approval of plans showing road crossings on its proposed extension to Beauport, P.Q.

File 15243.5

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of May 21, 1924, the Quebec Railway, Light, Heat and Power Company filed plans and profiles showing road crossings of proposed extension of its railway to Beauport, and stated that on April 14 it had written the Mayor of Giffard in reference to the crossings, sending also a copy of the plan.

The crossings involved were on Monument street, where the railway crossed at grade level and did not disturb the level of the street; on St. John street, which had not been opened up; and on the street shown on the plan as Village street, which leads to Beauport station.

The Board's Assistant Chief Engineer recommended that the application be granted.

The municipality was written to asking whether it was consenting. It submitted a consent on conditions which was later embodied in a by-law dated June 19, 1924, which by-law was to be effective on July 4, 1924. These conditions are referred to later.

In the meantime, a memorandum had been placed on file by the late Chief Commissioner, reading as follows:—

"Upon reading the report of Mr. Simmons, who personally visited the locus, and realizing the importance of early construction if the work is to be completed during the present year, I think an order should issue approving the highway crossings as applied for by the company, but as there seems to be considerable difference of opinion between the company and the municipality as to the conditions, leave should be reserved to the municipality to apply to the Board for any additional protection which in their judgment may be considered necessary, and the same can be decided after a hearing, if necessary."

This was agreed to by Commissioner Lawrence; and thereafter Order No. 35233, of June 19, 1924, issued.

The memorandum above quoted reserved leave to the municipality to apply later for any additional protection it might consider necessary; and it will be noted that the same condition appears in the order. It was clearly understood, therefore, that what was involved was concerned with matters of additional protection.

The order authorized the construction of the extension across Monument road and Village street, and along St. John street. These are referred to in the by-law as being the avenue leading to Monument station; Giffard road, leading to Beauport station; and St. Jean Baptiste road, which runs back of Beauport station.

Under date of July 9, the Board intimated that a hearing would be held and a personal visit made to the location.

As indicated, the matters reserved related to protection. It was found, however, when the sitting was held in Quebec that other matters outside of the reservations made were contained in the conditions set out in the by-law; and an opportunity was given to discuss these at the hearing.

Condition No. 1 reads:—

“That the company apply as far as the eastern limits of the village of Giffard, the same rates at present in the city of Quebec, just as if the municipality of Giffard was a part of the said city.”

It was pointed out at the hearing that this was not a question pertinent to the approval of what was concerned, and that if the applicants considered that the present fare was not reasonable, this was a matter to be dealt with by a subsequent application under the Railway Act.

Condition No. 2 reads:—

“That in future the company alone is to be responsible and undertake the construction and maintenance of the water works and drainage of the corporation, present or future, in the said roads, streets or avenues at present in existence, or which may be opened up in the future, or in any portion of the corporation crossed by the right of way of the company.”

The obligations herein sought to be placed upon the railway are not reasonably pertinent to such an application as the present.

Condition No. 3 reads:—

“That the company undertake the maintenance of the ditches, drains, sidewalks and culverts at present in existence, and that it construct at its own expense the ditches, drains, sidewalks, and culverts which may be needed in the said roads, streets or avenues, at the point of crossing or along the said extension.”

The obligations of the railway in regard to drainage are dealt with in section 268 of the Railway Act, and do not need to be embodied in any order.

The point was raised by the municipality that the expense of carrying on sewer or water-main construction under the tracks on the highway would be increased by the fact that the tracks were located on the said highway.

The inspection made after the hearing by the members of the Board, accompanied by Board's Engineer, showed that the level of the tracks at the point of crossing was practically the same as the level of the highway; that is to say, no additional burden of weight by creation of the embankment was placed over the sewers or water-pipes in place.

If any damage to the water-pipes or sewers arises from the operation of the railway, the railway admitted, at the hearing, its liability. The fact that

there is no additional embankment carrying the tracks across the highway would seem to suggest that the difficulties the municipality anticipates are remote.

The Board has had before it a case where the city of Belleville was installing water-pipes and sewers under the tracks of the Canadian National Railways, and it was billed by the Canadian National Railways for the wages of the watchmen watching the track and its condition while the installation was taking place. It was held by the Board that since the work was being carried out on a highway which was senior to the railway, notwithstanding the expense of the watchmen was in the public interest in connection with the work, at the same time the city was carrying on a work and exercising the rights attaching to its ownership of the highway, and therefore could not be subjected to the expense of the watchmen; but that said expense should be borne by the railway company whose right was junior. See *Informal Ruling* in this matter, *Board's Judgments and Orders*, Vol. X, p. 31.

At present, the Board has nothing before it which in any way indicates that additional expense will be entailed by the municipality in connection with its sewers and water mains because of the location of the railway; and in the absence of such evidence, no ruling or expression of opinion appears necessary or justifiable.

The railway company, in dealing with the obligations as to sidewalks, stated it was prepared to put back the sidewalks the way they were before the building of the track, and to repair all that were broken on account of the building of the track. As was pointed out at the hearing, the sidewalk is a highway facility, the burden of maintenance of which would, in the ordinary course, be upon the railway.

Conditions No. 4 and No. 5 read:—

"4. That the level crossings across the said roads be solely in charge of the company as to construction and maintenance, and if in the future it were necessary to appoint watchmen, such watchmen are to be paid by the company.

"5. That the company leave in proper condition, after the work of construction, the roads along or across which the said railway runs."

The position is that the company admits its burden in regard to protection under *Condition No. 4*, and if the Board finds at any time in the future that watchmen are necessary it is responsible for the burden of expense.

As to *Condition No. 5*, the liability of the company thereunder was admitted by it.

Condition No. 6 reads:—

"That within the limits of the company's right of way, all work in connection with the construction or maintenance of the said roads, in all seasons, be at the expense of the company."

The situation here is that the railway company undertakes to put the road in the same condition as it was before it built the track.

As to maintenance, the situation is that the railway is carried across a municipal highway. If there were no railway there, the burden of maintenance in respect of the portion of the highway on which the railway now has an easement would be on the municipality, and the coming of the railway makes no difference.

In addition to the conditions above set out, one or two minor matters were raised. It was stated there was a manhole blocked on the Giffard road and that the concrete had been broken from it. The railway stated that the manhole in question had not been broken or interfered with; but it undertook that if it had been disturbed, it was to be put in proper shape.

Reference was also made to a second track of the railway over Canardiére highway, to join its new line of extension which crosses the municipality of Giffard between Beauport station and the terminal of the railway. It is set out that at the limit east of the city of Quebec, the second line as referred to is to be located on the main highway of the municipality, for a distance of about 75 feet.

Counsel for the municipality said there was no objection to the company putting the second track in place; but it was submitted that the burden of removing snow at the point in question should be on the railway. It was said that if the railway were kept clear of snow and the highway was not kept clear by the railway, there might be two different traffic levels, which would create a dangerous condition.

After some discussion, counsel for the railway stated that the company was prepared to clear the track and the sides, about 15 feet outside the track, along the portion of it on the highway.

As pointed out, order has already issued sanctioning the highway crossings; and no further action in this regard is necessary.

The other matters, the discussion and disposition of which are set down in this judgment, are set down as a matter of convenient reference; and no further order appears to be necessary.

December 11, 1924.

Commissioner Boyce concurred.

Application of the Municipal Corporation of the County of Essex, Ont., and the Township of Anderdon, Ont., under Sections 241 and 242 of the Railway Act, for an Order directing the Michigan Central Railroad Company and the Canada Southern Railway Company to reconstruct or put into proper and safe state of repair the overhead highway bridge on the Front or River Road in the Township of Anderdon, Ont., over the said railway lines.

File 33330

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The application as launched dealt with the reconstruction of the bridge on the Front or River road, or, in the alternative, the putting of the said bridge into proper and safe state of repair. As developed at the hearing, the application is one to reconstruct the bridge.

The bridge in question is about one mile from the town of Amherstburg. As developed in the pleadings and at the hearing, the Canada Southern Railway Company, which is controlled by the Michigan Central Railroad Company, had, in order to reach the river bank level upon which the town of Amherstburg is situated, to make a cutting in the road. It appears that the highway was carried over this cutting by a wooden bridge structure which was built about 45 years ago and which has been strengthened from time to time. The bridge is about 110 feet in length and has a width of 19 feet. The road was made a county road in July, 1916, and was in 1919 established as a provincial county highway.

As referred to later, the bridge is used not only for highway traffic but also for the traffic of the Sandwich, Windsor and Amherstburg Electric Railway, which is now owned and operated by the Hydro-Electric Power Commission of Ontario.

On the bridge, the portion available for highway traffic is 10 feet 9 inches. From the gauge side of the rail of the electric line to the curb, the remainder of the 19 feet is used by the electric line. The approach to the bridge from the highway necessitates going on at an angle.

While it would appear that in the absence of electric cars on the portion of the electric line crossing the bridge the portion of the roadway on which the electric tracks are laid would also be available for highway traffic, the situation does not work out this way in practice. The bridge being 110 feet in length, the approach on the angle would give only a short distance of travel on the car-track portion, and then would necessitate swinging back off this section. This makes what is recognized as an awkward condition for travel.

As pointed out, the bridge was constructed by the Canada Southern Railway Company. In 1903, the Sandwich, Windsor and Amherstburg Electric Railway Company, which has been operated by the Hydro-Electric Power Commission of Ontario since January, 1920, constructed its electric railway along the Sandwich road, and desired to cross the railway and works of the Canada Southern Railway Company with an overhead bridge. The matter came before the Railway Committee of the Privy Council on March 4, 1903. Upon this application and with the approval of the Railway Committee, an agreement was thereafter entered into between the Sandwich, Windsor and Amherstburg Railway Company and the Canada Southern Railway Company, said agreement being dated May 26, 1903. Under this, it was provided that the cost of maintenance of the said bridge should be divided equally between the two railway companies. It was set out in the agreement that in the event of the requirements of either party becoming such as to necessitate a larger or stronger bridge than the bridge provided for in said plans and specifications, the expense attendant or consequent upon such change shall be assumed and borne solely by the company desiring such change; the division of cost of maintenance to remain as above set out.

It was further provided that in the event of the parties mutually agreeing at any time to substitute a bridge of a more permanent character, then said substituted bridge shall be constructed by the Canada Southern Railway Company at the joint expense of the parties to the agreement; one-half of the whole cost of construction as well as one-half of the cost of future maintenance of the bridge and approaches to be borne by the electric railway.

Both the railway companies answered, in the first instance, to the effect that there was no necessity at the present time for the reconstruction of the bridge; but that if such reconstruction were directed, the whole cost should be upon the applicant. The Michigan Central Railroad Company, on behalf of the Canada Southern Railway Company, submitted that if the Board did not see fit to put the whole cost of the reconstruction on the applicant, then, after deducting contribution from the Grade Crossing Fund, the balance should be borne one-half by the Michigan Central and the Hydro-Electric Power Commission of Ontario and one-half by the applicant. Nothing was said about the division of maintenance.

The Hydro-Electric Power Commission took the same position as the Michigan Central, with the further provision that the cost of maintenance should be borne in the same proportions by the applicant, the Michigan Central, and the Hydro-Electric Power Commission.

The expert evidence rendered by the engineer of the county of Essex admitted that the bridge in its present condition was not unsafe for the carriage of even heavier vehicles than were at present using it. He said that the safety of approach and the question of alignment were more important, and submitted that the limited width of the approach as it exists at present made for congestion of traffic. He admitted that the bridge as at present in place had still about five years of life.

While as pointed out in the answers, the primary position of the railways was that the full cost of reconstruction should be borne by the municipality, this was not so emphasized in the course of the hearing; and what was put forward was concerned with the general proposition that there should be division of cost.

Following the hearing, the Board's Engineer made an inspection, at which there were present representatives of the steam railway, the county of Essex and the Hydro-Electric Power Commission. The following excerpt contains the recommendation of the Board's Engineer:—

"As will be seen from the plan on file, there is a curve at each end of the bridge and the latter is high enough that it is not possible to see a car coming from the opposite direction when one is approaching the bridge. The bridge is about 19 feet wide, and in my opinion is none too wide for the vehicular traffic there will be on this highway when the pavement is finished. With part of the space taken up by a car track, it is altogether too narrow; and I can see that an accident might easily happen, owing to the restricted width.

"I am of the opinion that the application should be granted, and that the Michigan Central Railroad Company should be required to construct the bridge to a width of 28 feet for vehicular and car traffic, and provide a sidewalk on one side.

"The bridge is in a good state of repair and will last five years easily."

I am of opinion that the conditions in regard to highway traffic as developed warrant a new bridge, in accordance with what is set out in the recommendation of the Board's Engineer.

The existing clearance is 21 feet—1 foot 6 inches short of the statutory clearance. Having in mind the limited traffic under this bridge, namely, one mixed train a day, daily except Sunday, and having in mind, also, that the average car using the short branch line concerned will not be over 14 feet in height, I think it would be safe to allow a clearance of 21 feet.

The Michigan Central should prepare plans of a new bridge structure and submit same to the applicant and to the Hydro-Electric Power Commission for their consideration; thereafter, if any questions arise in regard to the details of the plan or settlement of any engineering matter in connection therewith, the same should be referred to an Engineer of the Board for determination.

Both the Michigan Central and the Hydro-Electric Power Commission refer to contribution from the Grade Crossing Fund. I very much regret that the Board is unable to make such a contribution. The statutory limitation imposed by section 262 of the Railway Act enables the Board to make grants out of the Grade Crossing Fund in respect of "highway Crossings of railways at rail level in existence on the first day of April, one thousand nine hundred and nine." Owing to the limitation, nothing can be done by the Board in the present case.

While the traffic on the Michigan Central at this point is the limited traffic of a branch line, it must be recognized that it is the construction of this branch line which created the necessity for the bridge. The traffic on the electric railway is limited. The return submitted by the Michigan Central giving a count for July 19 and 20, in the period from 6 a.m. to 11 p.m., shows 37 electric cars on the 19th and 33 electric cars on the 20th. The highway traffic is increasing. At the same time, the bridge is not unsafe for the existing traffic; and it has yet approximately five years' life. With the completion of work which is under way on the highway, there will, according to the contention of counsel for the applicant, be a still further burden of highway traffic. It is contended that on account of the work now going on and the diversion now existing, the figures submitted for highway traffic are not characteristic, being an under-statement.

While recognizing and applying the position laid down in the *King Street Bridge Case, Hamilton (City of Hamilton vs. C.P.R. and T.H. & B. Ry. Cos., 25 C.R.C., 379)*, I do not think that this prevents giving some weight to the fact that the increase in highway traffic is due to the changed status of the highway.

I am of the opinion that the cost of construction of the new structure should be distributed as follows: 40 per cent on the Michigan Central; 35 per cent on the county of Essex; and the balance on the Hydro-Electric Power Commission.

There remains to be dealt with the cost of maintenance. Under the agreement referred to, the cost of maintenance was to be divided equally between the steam line and the electric line; and I think that the same provision might be continued. This, however, to be subject to what is set out in the *King Street Bridge Case, p. 384*, as follows:—

“I do not think that they (the railway company) should be held responsible for placing a covering or surfacing on the substructure thus provided of any different construction or durability than that which they found when the road was severed; and, having provided such a structure with such a covering, I then think the burden should be on the municipality to pave it or cover it with any material which, in their judgment, might be necessary to take care of the traffic in that particular locality.”

December 18, 1924.

Commissioner Boyce concurred.

ORDER No. 35851

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the “Applicant Company,” for permission to close the agency station at English River, in the Province of Ontario.

File No. 4205.386

WEDNESDAY, the 26th day of November, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Chief Operating Officer,—

The Board orders: That the applicant company be, and it is hereby, authorized to close its station at English River, in the province of Ontario.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 35846

In the matter of the application of the Chatham, Wallaceburg and Lake Erie Railway Company, under Section 323 of the Railway Act, 1919, for approval of By-law No. 16, passed November 19, 1924, authorizing Ralph Keemle, Vice-President, and Fred Waugh, Traffic Manager of the Company, from time to time to prepare and issue tariffs of every description of the tolls to be charged by the Company for passenger and freight traffic on its lines.

File No. 13686

WEDNESDAY, the 3rd day of December, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said By-law No. 16, passed November 19, 1924, authorizing Ralph Keemle, Vice-President, and Fred Waugh, Traffic Manager, of the Chatham, Wallaceburg and Lake Erie Railway Company, from time to time to prepare and issue tariffs of the tolls to be charged by the company for passenger and freight traffic on its lines, on file with the Board under file No. 13686, be, and it is hereby, approved.

2. That Orders Nos. 9523, 25252, and 34545, dated respectively February 12, 1910, August 4, 1916, and December 7, 1923, made herein, be rescinded.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 35858

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway between Donnacona and Dombourg Junction, known as the Donnacona Cut-Off.

File No. 668.49

WEDNESDAY, the 10th day of December, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway known as the Donnacona Cut-off, mileage 15.9 La Tuque Subdivision to mileage 31 on the Grand Mere Subdivision, a distance of 6.1 miles, in the province of Quebec.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 35900

In the matter of the application of the Edmonton, Dunvegan and British Columbia Railway Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of the location of its station at Wembley, in the Southwest Quarter of Section 22, Township 71, Range 8, West 6th Meridian, at mileage 64.9 Grande Prairie Branch, as shown on the plan dated Edmonton, October 13, 1924, on file with the Board under file No. 18903.148.

FRIDAY, the 12th day of December, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Chief Operating Officer, the Municipal District of Bear Lake No. 740 offering no objection, although duly notified as appears by proof of service of notice of the application, filed,—

The Board orders: That the location of the applicant company's proposed station at Wembley, in the southwest quarter of section 22, township 71, range 8, West 6th meridian, at mileage 64.9 Grande Prairie Branch, as shown on the said plan on file with the Board under file No. 18903.148, be, and it is hereby, approved.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 35907

In the matter of the application of the Council of the Village of Neuville, in the Province of Quebec, for an Order directing the Canadian National Railway Company to erect a station as near as possible to the Village of Neuville, on the Transcontinental Railway.

File No. 33610

WEDNESDAY, the 17th day of December, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company; and upon the report and recommendation of its Assistant Chief Engineer and its Chief Operating Officer,—

The Board orders: That the location of the station in lot 100 of the village of Neuville, in the province of Quebec, at mileage 13.6 of the Transcontinental Railway, as shown on the Canadian National Railway Company's Plan No. 1032, dated Quebec, November 18, 1924, on file with the Board under file No. 33610, be, and it is hereby, approved.

H. A. McKEOWN,

Chief Commissioner.

GENERAL ORDER No. 411

In the matter of the application of the Railway Association of Canada for certain amendments to Rules 93 and 99 of the General Train and Interlocking Rules, in order to provide for the method of operation now employed by certain of its member railways, under so-called Special Instruction "E":

File No. 4135.26

FRIDAY, the 19th day of December, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Whereas, by General Order No. 322, dated December 10, 1920, all railway companies subject to the jurisdiction of the Board were required to withdraw the said Special Instruction "E" from their respective working time-tables, and thereafter observe the Uniform Code of Rules for Canadian Railways, approved by General Order No. 42, dated July 12, 1909—the necessary changes and instructions to employees to become effective June 1, 1921;

And whereas the time within which the said changes and instructions might become effective was extended, by General Orders Nos. 340, 343, and 397, until June 15 and September 1, 1921, and August 1, 1924, respectively, or until further Order of the Board.

And whereas an appeal from the Board's General Order 397, dated April 16, 1924, to the Governor General in Council is still pending.

And whereas the Governor General in Council, by Order in Council P.C. 2140, dated December 11, 1924, rescinds the sanction given by Orders in Council P.C. 1405 of by-law No. 98 of the Canadian Pacific Railway Company; P.C. 1824, of by-law dated September 3, 1924, of the Quebec Central Railway Company; and P.C. 1934, of by-law No. 4 of the Central Canada Railway Company, in so far only as such sanction is applicable to Rule 93A,—

The Board Orders: That the time within which the said changes and instructions may become effective be, and it is hereby, further extended until the 31st day of January, 1925, or until further order of the Board.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 412

In the matter of the General Order of the Board No. 403, dated June 6, 1924, requiring all railway companies subject to the jurisdiction of the Board to install electric lights in the classification and marker lamps of all locomotive engines in service which are now, or in future may be, equipped with electric light installations.

File No. 6511.8

FRIDAY, the 19th day of December, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed on behalf of the Boston and Maine Railway Company, and the report and recommendation of its Chief Operating Officer,—

The Board orders: That the said General Order No. 403, dated June 6, 1924, be, and it is hereby, amended by adding the words, "except the Boston and Main Railway Company," after the word "Board" in the second line of the operative part of the order.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings



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Application of the Nova Scotia Shippers' Association, and the Nova Scotia Fruit Growers' Association for suspension of proposed increased rates on apples from Dominion Atlantic railway stations to Halifax for export.

File 26560.4.

REPORT OF W. E. CAMPBELL, CHIEF TRAFFIC OFFICER

THIS REPORT IS ADOPTED AS THE
JUDGMENT

OF THE BOARD IN THIS MATTER

The Dominion Atlantic Railway, on August 1, 1924, issued tariff C.R.C. No. 746 to be effective September 8, 1924, providing for an increase in the rates on green apples from its various stations to Halifax for export. The increase in the carload rates was approximately 4 cents per barrel, or taking the rates as in effect prior to those authorized by General Order No. 308 upon September 13, 1920, as 100 per cent, the increase was from a basis of 125 per cent thereof to 140 per cent.

The Nova Scotia Shippers' Association and the Nova Scotia Fruit Growers' Association applied for suspension of the proposed increased rates and upon consideration of the submissions filed in support of the application the tariff in question was suspended by Order No. 35529, dated September 8, pending hearing by the Board which was held at Halifax on October 20.

In justification of the proposed increase in these rates the railway company, in a memorandum filed with the Board by Mr. Flintoft under date of August 27, relied very largely on its financial situation, exhibits relating thereto being submitted. Summarizing this memorandum as well as submissions of counsel at the hearing, it was set out that during the calendar year 1923 there was an actual deficit in operating costs against revenue of approximately \$73,000, or a cost of \$123.53 to earn \$100; and that for the half-year ending June 30, 1924, the operations showed a cost of \$149.17 to earn \$100 as compared with \$146.73 for the corresponding half-year of 1923. The railway company stated that under these conditions, with no prospect of improvement, together with a falling-off in freight revenue as well as in local passenger traffic, it was impossible to continue operating under present rates and maintain a satisfactory service as well as keeping the property in condition for the continuance of efficiency of

service and the movement of traffic in a safe and satisfactory manner. It was stated the situation of this railway company is worse than it was in 1920 when a 40 per cent increase in rates was authorized by the Board, which is justification at this time for a restoration of the 40 per cent increase in export apple rates.

Attention was directed to the necessity of maintaining a large amount of refrigerator equipment to satisfactorily handle the apple traffic during the winter season, thus increasing train tonnage with no adequate return therefor in the charge assessed for such service over and above box-car equipment, and a statement was filed as an exhibit containing computations covering the increased cost of handling export apples in refrigerator cars as compared with ordinary box-cars. Comparative figures of both freight and passenger traffic and revenue were given for the calendar years of 1920 and 1923 and the first six months of 1924 as indicative of a material decline therein, and it was stated that this is in part due to improved public highways and automobile, motor bus and motor truck competition.

In justification for increasing the export apple rates while no increases are proposed in any other rates, it was alleged that there is too great a spread between the local and export rates and that the increase will not impose any undue hardship on the apple industry and will only give rates to the railway company commensurate with the service rendered. It was further alleged that the company's other rates, both class and commodity, are, generally speaking, as prescribed by Orders of the Board and on the same basis as in effect on other railways in Eastern Canada, consequently this particular traffic afforded the only means of relief and was an increase in a tariff on traffic which could well stand it and which is on a lower basis than it properly should be.

On behalf of the Nova Scotia Shippers' Association and the Nova Scotia Fruit Growers' Association, hereinafter referred to as the complainants, issue was taken with a number of the submissions of the railway company. Epitomized, the principal points advanced by complainants were:—

1. They challenged the contention of the railway company that there is too great a spread between the present export and domestic rates. They submitted exhibits comparing the domestic and export rates from Ontario points to St. John, N.B., and while frankly stating there is no parity in conditions and not alleging that the rates here in question should be based on the Ontario rates, urged that if with respect to the Ontario rates it is found that the spread between the domestic and export rates is from 26 to 30 per cent, this is some indication that a spread of approximately 17 per cent in the Annapolis Valley is not an unreasonable spread.

2. Complainants filed exhibits taking the year 1916 as a basis at 100 per cent showing that from Ontario points to St. John the domestic rates are at present 168.5 per cent and the export rates 178.7 per cent. From typical points on the Dominion Atlantic Railway to Halifax the domestic rates are at present 182 per cent and the present export rates 203.7 per cent and the proposed export 227.5 per cent. The exhibits further show that in 1916 the export rates from Dominion Atlantic Railway stations to Halifax averaged 72.7 per cent, of the domestic rates contemporaneously in effect, or a spread of 26.3 per cent, which has subsequently by various rate changes been narrowed to a spread of 17.5 per cent, making the present export rates approximately 82.5 per cent of the domestic rates. Complainants stated the proposed export rates would approximate 92 per cent of the domestic rates and alleged that under such a narrowing in the spread the export rates began to lose their character as commodity rates, particularly when the carload minimum weight attaching to the commodity rate is considered, which is 25 per cent higher than obtaining under the domestic rates, being 30,000 and 24,000 pounds, respectively.

3. Attention was directed to the substantial increase made in the export rates here under consideration on September 10, 1919, there being no corresponding increase contemporaneously made with respect to other rates. The increase made in these rates at that time was in addition to the general percentage increase authorised by the Board for application uniformly on all steam railways subject to its jurisdiction, and this increase explains the appreciably greater percentage of increase in these export rates than in the domestic rates, as above referred to, i.e., 203.7 per cent on the export as compared with 182 per cent on the domestic. Two of complainants' witnesses stated that it had been their understanding at the time that this increase of September, 1919, would be taken into account when general increases subsequently were made effective; however, it was not.

4. An exhibit was submitted—intended to be considered in conjunction with an exhibit filed by the railway company—purporting to show that the revenue returns to the railway on this export apple traffic indicated that it is a profitable traffic, and alleging from this exhibit and other computations submitted that the loss shown by the railway company's figures of operating cost is attributable entirely to their traffic in commodities other than apples.

5. Complainants submitted that if the financial requirements of the railway necessitated an increase in rates there should be a general overhauling of the rates, as it would be intolerable to the apple industry to saddle the entire increase on the one particular traffic, viz., apples moving for export.

So far as relates to the use of refrigerator cars and the additional cost thereby imposed upon the railway company over the movement in ordinary box-cars, there was quite a discrepancy between the figures of the railway and the complainants covering the winter movement of 1923-24. The railway originally filed an exhibit showing 874,000 barrels handled in refrigerator cars. This was disputed by complainants who claim the proper figure to be 540,000 barrels, or approximately one-half the yearly movement. The railway then admitted an error in its figures and claimed that these should read 608,661 barrels. Counsel for the railway alleged that the rates were originally established based on a movement in ordinary box-cars only, but having in view that these rates were revised by the railway company itself in 1915 and approved by the Board by Order No. 24489, dated November 27, 1915, at which time it is believed that refrigerator cars were used as well as box-cars, I am of the opinion the contention of the railway company that the rates contemplated shipments in box-cars only is inconclusive. At any rate, subsequent to the original establishment of the rates the railway company, in 1917, established a tariff provision under which they make an additional charge of \$3 per trip on these export apples and vegetables when moved in refrigerator cars, which is just that much additional revenue, although it is alleged by the railway that it is not an amount commensurate with the difference in cost. No evidence was adduced indicating specifically what change, if any, has taken place in recent years in the percentage of traffic hauled in refrigerator and box cars, respectively. I do not consider the railway sufficiently developed its contention on this point to warrant the Board giving it very much weight.

Counsel for the railway stated—

"... the railway has to keep an adequate supply of refrigerator cars on hand and on call for these shippers, no matter whether they are used or not; and these cars have been idle and have had to remain idle, if my instructions are correct, since March of this year. Not only are they an expensive item to carry over the railway, on account of their heavy weight and small capacity as compared with the box cars, but they have been compelled to keep them idle since last March, in order to provide them and have them here for this particular trade and traffic."

According to the railway company's reports it owns no refrigerator cars. It is assumed it rents them from its parent company, the Canadian Pacific Railway. It is stated these cars stand idle from March to November. It is noted from the company's reports that under the heading of non-operating expenses there is an item "Hire of freight cars" which it is noted in the year 1919 amounted to \$45,015.82, and in 1923 to \$102,842.94. There is another item under the same heading, "Rent for all other equipment," which increased from \$9,960.04 in 1919 to \$31,790.91 in 1923. There has been nothing submitted to the Board indicating whether the rental of these refrigerator cars comes under one of these headings, or any particulars as to the nature of the compensation paid for their use, especially during the long period of March to November when they are lying idle. When the handling of traffic in refrigerator cars is stressed by the railway, as in this case, it seems to me that in view of the fact that it owns no cars of this type some explanation and details of the arrangement under which it provides them, and the compensation paid therefor, is relevant so far as its effect on the operating cost of the railway is concerned.

Comparative figures for 1920 and 1923 were submitted by the railway as indicating a material decline in freight and passenger traffic. The figures for the first six months of 1924 are also given but these, without comparative figures for the same period of the preceding year, and being for the lightest half of the year so far as freight traffic, at any rate, is concerned, do not permit of any definite conclusions being drawn therefrom. I submit that a comparison as between 1920 and 1923 is not a proper one as indicating a decline in the volume of traffic handled, because 1920 was the year in which this railway handled by far the largest traffic in its history; in other words, that year was abnormal and therefore not a proper one to use for comparative purposes. Below is set out the number of tons and passengers carried for the years 1915-1923, inclusive, as contained in the company's reports as found in the annual publication of the Dominion Bureau of Statistics.

	Tons carried	Passengers carried
*1915..	326,628	407,492
*1916..	344,397	466,550
*1917..	399,106	519,867
*1918..	435,265	430,225
1919..	433,644	532,586
1920..	572,323	538,636
1921..	418,536	459,894
1922..	422,975	458,694
1923..	431,595	441,993

*—Year ending June 30; other years ending December 31.

The last three years have shown an upward trend in the number of tons carried, but a downward trend in the number of passengers carried, although it will be noted more passengers were carried in 1923 than in 1918. The figures, when extended for a sufficient period to enable them to be viewed in proper perspective, speak for themselves on this phase of the railway company's submission.

In justification of the proposed increase in export apple rates the company relied largely and mainly upon the figures it submitted as to the financial results of its operations for the year 1925 and first half of 1924. Deficits in operating costs against revenue were stressed. For the half-year ending June 30, 1924, there were no details furnished showing segregation of the operating revenue as between freight and passenger traffic, nor any details whatever showing the various items making up the total given for operating expenses.

No figures for the same period of 1923 were furnished. The railway company did not, therefore, give any detailed explanations of their figures and these are not available, so that obviously no analysis whatever can be made of these half-year figures, consequently, in the form submitted, I consider them of no value to the Board as enabling it to draw any definite conclusions from them one way or the other.

Below is shown the exhibit filed by the railway company for its 1923 operations.

EARNINGS AND EXPENSES, YEAR ENDED DECEMBER 31, 1923

Operating revenue.. . . .	\$1,896,075 52	Operating expenses	\$1,874,115 70
Revenue from outside opera-		Taxes.. . . .	18,778 23
tions.. . . .	105,965 44	Rent of Windsor Branch...	83,226 90
		Expenses of outside opera-	
		tions.. . . .	99,344 15
	<hr/>		<hr/>
	\$2,002,040 96		\$2,075,464 98
Interest on acquired securities	7,500 00	Debenture interest.. . . .	239,926 67
Miscellaneous interest.. . . .	699 27	Depreciation.. . . .	174,469 50
Exchange on cash transferred			
to London, covering debent-			
ure interest	5,349 25		
Deficit.. . . .	474,271 67		
	<hr/>		<hr/>
	\$2,489,861 15		\$2,489,861 15

For the year ending December 31, 1923, it cost Dominion Atlantic Railway \$123.53 to earn \$100 as compared with \$107.44 for previous year.

On the strength of these figures the railway company alleges the increase in rates is justified. No comparative figures of similar character were filed for 1922, and so far as the record stands the only clue to the condition in 1922 is to be found in the notation at the bottom of the above exhibit stating that for 1923 it cost \$123.53 to earn \$100 as compared with \$107.44 for previous year. The foregoing, with no details or explanations bearing thereon, is the material placed upon the record for the consideration of the Board. The railway company had alluded to diminishing traffic, yet the foregoing figures indicate a very large increase in operating expenses, which immediately creates a desire for additional details, unfortunately not available on the record. Upon referring to the annual reports issued by the Dominion Bureau of Statistics in order to make comparison between 1923 and 1922, marked increases in certain operating costs became apparent which made it seem advisable to take out some particulars over a period of years in order that, if possible, the matter might be better understood. Certain figures were therefore taken for the years 1919 to 1923, inclusive. The year 1919 was chosen as the starting point because this was the first year for which the figures were recorded for the calendar year and also for the reason that to go beyond that year would be getting back to the period when wages and costs generally were on a very much lower basis, so that the comparison would not be very helpful. The following operating statistics for the calendar years 1919 to 1923, inclusive, are as reported by the railway company and published by the Dominion Bureau of Statistics:

DOMINION ATLANTIC RAILWAY

Statement No. 1.

	1919	1920	1921	1922	1923
	\$ cts.	\$ cts.	\$ cts.	\$ cts.	\$ cts.
EARNINGS FROM OPERATION					
From Passenger.....	770,145 88	822,229 90	776,504 16	745,938 48	744,206 50
Freight and Switching.....	1,047,881 45	1,332,298 22	1,360,371 09	1,275,603 02	1,250,895 14
Other Earnings from Operation.....	31,235 02	34,619 06	26,656 10	34,678 03	36,232 69
Total Earnings from Operation.....	1,849,262 35	2,189,147 18	2,163,531 35	2,056,219 53	2,031,334 33
OPERATING EXPENSES					
Maintenance of Way and Structures.....	418,651 07	475,164 65	411,998 37	380,002 82	477,110 83
Maintenance of Equipment.....	207,517 54	275,629 36	209,209 86	252,476 77	380,332 23
Traffic.....	40,809 91	67,347 00	48,643 05	54,458 60	49,419 11
Transportation (Rail Line).....	842,826 99	1,073,062 04	916,453 33	853,992 72	873,841 64
General Expenses.....	65,426 22	92,671 37	88,031 44	85,742 47	93,411 89
Total Operating Expenses.....	1,575,231 73	1,933,874 42	1,674,336 05	1,626,573 38	1,874,115 70
Net Operating Earnings.....	274,030 62	205,272 76	489,195 30	429,646 15	157,218 63
OPERATING INCOME					
Net Operating Revenue.....	274,030 62	205,272 76	489,195 30	429,646 15	157,218 63
Railway Tax Accruals.....	13,392 82	17,922 59	18,280 68	19,113 36	18,778 23
Net Operating Income.....	260,637 80	187,350 17	470,914 62	410,532 79	138,440 40
OUTSIDE OPERATIONS					
Revenue from Outside Operations.....	36,298 33	110,539 34	118,802 23	111,995 13	105,965 44
Expenses for Outside Operations.....	34,739 86	104,086 58	104,779 81	92,831 25	98,430 54
Net Revenue from Outside Operations...	1,558 47	6,452 76	14,022 42	19,163 88	7,534 90
Taxes on Outside Operations.....				910 16	913 61
Net Income from Outside Operations...	1,558 47	6,452 76	14,022 42	18,253 72	6,621 29
Total Operating Income.....	262,196 27	193,802 93	484,937 04	428,786 51	145,061 69
NON-OPERATING INCOME.					
Other Properties Income.....	14,625 00				
Income from Funds and Securities.....		11,827 97	7,503 20	7,540 70	7,501 60
Miscellaneous Income.....			16,030 00	10,965 50	6,046 92
Total Non-Operating Income.....	14,625 00	11,827 97	23,533 20	18,506 20	13,548 52
Gross Corporate Income.....	276,821 27	205,630 90	508,470 24	447,292 71	158,610 21
NON-OPERATING EXPENSES					
Hire of Freight Cars (Debit bal.).....	45,015 82	98,433 32	73,637 71	74,388 51	102,842 94
Rent for all other Equipment.....	9,960 04	35,605 04	31,396 74	30,840 36	31,790 91
Joint Facilities, Rents.....	624 96	624 96	624 96	624 96	624 96
Rent for Leased Roads.....	71,734 45	86,215 98	84,338 20	81,920 15	83,226 90
Interest on Funded and Unfunded Debt	239,926 67	239,926 67	239,926 67	239,926 67	239,926 67
Total Non-Operating Expenses.....	367,261 94	460,805 97	429,924 28	427,700 65	458,412 38
Net Corporate Income.....			78,545 96	19,592 06	
Net Corporate Loss.....	90,440 67	255,175 07			299,802 17

I have not made any analysis whatever of any other portion of the company's finances or activities beyond the one item of operating expenses. This is the item which was stressed at the hearing and the only one here dealt with. It will be observed that without any appreciable difference in the volume of traffic handled there was an increase of \$247,542.32 in operating expenses in 1923. Abnormal increases apparently are shown under the following headings:—

	1922	1923
Maintenance of way and structures.. . . .	\$380,002 82	\$477,110 83
Maintenance of equipment.. . . .	252,476 77	380,332 23

It will be noted from the statistics shown on page 10 of this report that the 1923 figures exceed by a large amount those of any other year in the company's history. The details making up the amounts under these subheadings have therefore been extracted for the same years and are as follows:—

DOMINION ATLANTIC RAILWAY
DETAILED STATEMENT OF OPERATING EXPENSES
MAINTENANCE OF WAY AND STRUCTURES

	1919	1920	1921	1922	1923
	\$ cts.	\$ cts.	\$ cts.	\$ cts.	\$ cts.
Superintendence.....	14,537 80	16,004 53	12,978 12	12,725 37	13,564 62
Roadway Maintenance.....	55,157 90	42,133 94	31,487 06	42,944 03	41,641 82
Bridges, Trestles and Culverts.....	15,562 00	20,170 96	30,921 06	39,216 54	33,655 78
Ties.....	15,124 57	106,021 10	103,157 50	80,009 88	77,002 94
Rails.....	24,000 00	24,000 00	24,000 00	24,000 00	60,000 00
Other Track Material.....	22,794 54	32,494 77	19 676 43	15 233 78	14,341 14
Ballast.....	12,329 04	6,259 80	11,613 43	4,722 22	9,236 85
Tracklaying and Surfacing.....	138,717 10	137,534 37	127,156 92	102,487 68	102,597 81
Right of Way Fences.....	7,072 27	8,584 22	7,883 80	7,058 05	6,516 28
Snow and Sand Fences and Snow Sheds.....	36 88				
Crossings and Signs.....	8,308 09	292 62	3,242 51	4,552 32	5,980 43
Station and Office Buildings.....	17,915 56	35,454 87	9,272 32	16,507 45	26,847 46
Roadway Buildings.....	538 63	30 54	31 27	312 65	270 45
Water Stations.....	2,191 64	3,452 33	3,349 45	3,833 08	5,680 42
Fuel Stations.....	1,004 93	1,747 39	441 41	214 21	738 03
Shops and Engine Houses.....	4,239 51	19,324 47	8,883 95	6,190 82	8,011 26
Wharves and Docks.....	710 37	1,201 63	2,182 83	880 06	2,713 62
Telegraph and Telephone Lines.....	1,256 44	451 84	390 05	441 85	806 52
Signals and Interlockers.....	*16 26	29 38		124 92	257 42
Miscellaneous Structures.....	159 22	18 30	7 22	133 98	173 70
Roadway Machines.....	1,201 78	2,308 19	2,785 86	2,942 35	2,497 29
Small Tools and Supplies.....	4,492 70	3,893 34	3,237 59	3,332 39	4,081 59
Removing Snow, Ice and Sand.....	1,605 07	13,065 47	9,018 86	11,769 76	59,598 55
Injuries to Persons.....	5 00				455 65
Stationery and Printing.....	168 53	282 45	135 03	244 73	305 45
Other Expenses.....	*462 24	128 14	145 72	124 71	135 75
Total Maintenance of Way and Structures.....	418,651 07	475,164 65	411,998 37	380,002 82	477,110 83

MAINTENANCE OF EQUIPMENT

Superintendence.....	7,312 46	9,577 70	7,769 23	7,680 75	7,609 32
Shop Machinery.....	2,810 39	2,827 98	1,609 79	3,880 76	20,225 17
Power Plant Machinery.....	835 25	908 61	99 42	160 61	620 91
Steam Locomotives—Repairs.....	105,154 51	140,156 58	107,592 95	145,014 08	199,190 84
Steam Locomotives—Renewals.....	12,000 00	12,000 00	12,000 00	12,000 00	12,000 00
Freight Train Cars—Repairs.....	39,568 50	61,508 35	44,430 54	45,008 62	55,420 34
Passenger Train Cars—Repairs.....	34,695 53	41,359 90	32,633 48	32,310 54	54,498 97
Work Equipment—Repairs.....	5,206 77	7,121 21	2,807 86	6,013 39	18,160 92
Work Equipment—Renewals.....					9,758 71
Stationery and Printing.....	131 72	169 03	265 09	408 02	324 57
Other Expenses.....	*197 59		1 50		
Freight Train Cars—Renewals.....					2,522 48
Total Maintenance of Equipment.....	207,517 54	275,629 36	209,209 86	252,476 77	380,332 23

*Credit items.

The items making up the principal increases are as follows:—

	1922	1923	Increase	Per cent
	\$ cts.	\$ cts.	\$ cts.	
Rails.....	24,000 00	60,000 00	36,000 00	150
Removing snow, ice and sand.....	11,769 76	59,598 55	47,828 79	406
Shop machinery.....	3,880 76	20,225 17	16,344 41	421
Steam locomotive repairs.....	145,014 08	199,190 84	54,176 76	37
Freight train cars, repairs.....	45,008 62	55,420 34	10,411 72	23
Passenger train cars, repairs.....	32,310 54	54,498 97	22,188 43	68
Work equipment, repairs.....	6,013 39	18,160 92	12,147 53	202
Work equipment, renewals.....		9,758 71	9,758 71	
Freight train cars, renewals.....		2,522 48	2,522 48	
	267,997 15	479,375 98	211,378 83	78.8

Taking the same items for previous years there is no apparent explanation to be obtained from a study of the figures such as indicating deferred maintenance, etc. The figures for 1922 are in themselves a substantial increase over 1921. In fact, according to the submissions of counsel for the railway company there has been no deferred maintenance in recent years but, on the other hand, the road and equipment have been brought to a much higher standard. Counsel stated at page 7283:—

“for a number of years past its efficiency has been very much improved. It has been put almost if not quite upon a standard basis, both as regards rolling stock and equipment of various kinds; and the manner in which it has discharged its obligations to the public in that respect has been commented upon very favourably by the shippers themselves.”

Standing by themselves and without explanation of any kind these figures appear to be entirely abnormal for the year 1923. If they are not abnormal an explanation should have been put in the record; if they are abnormal then the Board is not, in my opinion, warranted in granting an increase on this particular traffic alone based merely on the operating results of a single year containing an unascertained and unstated percentage or amount of operating expenses which are abnormal.

With regard to the suggestion of the railway company that this is the only item of traffic on which its rates could very well be increased, I do not consider their statement to be at all conclusive, nor do I attach much weight to their representation as to the spread between domestic and export rates. There is no recognized spread between these two classes of rates anywhere, and each case requires to be dealt with individually and on its merits and without reference to any particular spread.

Another feature in this connection is that at the time the tariff covering these proposed increased export apple rates was issued, on August 1, 1924, the Dominion Atlantic Railway were required to absorb a switching charge on this traffic at Halifax of \$5 per car.

Paragraph 8 of their submission of August 15, subsequently deleted, referred to this as being another feature that entered seriously into the matter of freight rates on export apples. At that time the railway company had not received, of course, a copy of the Board's Order No. 35457 (subsequently amended by Order No. 35735), dated August 7, 1924, which granted relief to the Dominion Atlantic Railway Company in connection with this switching charge, to the extent that the amount they absorb has been reduced from \$5 per car to \$2.50 per car. It is stated the average number of barrels per box-car is 223 and per refrigerator car 212, and that the traffic is roughly divided between these two classes of equipment 50 per cent to each. This would make an average of 217 barrels per car, on which the Dominion Atlantic Railway, by virtue of the Order issued subsequent to the tariff in question, effects a saving of \$2.50 per car, or 1.15 cents per barrel. On the quantity of apples exported via Halifax in 1923, viz., 1,152,134 barrels, this would make a saving in revenue to the Dominion Atlantic Railway of \$13,249.54 on this export apple traffic. In addition, there is a similar saving on potatoes, lumber and other traffic ex water or for furtherance by water, the amount of which I would not attempt to estimate. It will be observed, therefore, that this is a by no means small item and one that was not contemplated when the proposed tariff was issued.

Under all the circumstances, I do not consider the railway company's case was sufficiently developed to enable it to succeed in this application and recommend that no increase be allowed in these rates for the present.

OTTAWA, December 19, 1924.

Application of the Corporation of the City of London, Ontario, under Sections 257, 258, and 259 of the Railway Act, for an Order directing the Canadian National Railways to erect and maintain gates, or provide other sufficient protection on Dundas Street, in the City of London, Ontario, where the said company's railway intersects the said street.

File 9437.1211

Heard at London, Ontario, Thursday, November 20, 1924.

JUDGMENT

COMMISSIONER BOYCE:

Application, by the city, is made for protection at this crossing, by the railway company, either by gates, or other sufficient protection.

Dundas street, at this point, is crossed by the London and Stratford Branch of the old Grand Trunk Railway, now part of the Canadian National Railway System.

A similar application was made by Mr. Meredith, for the city of London, to the Board, under date November 14, 1914, when full investigation was made. At that time the traffic, for forty-eight hours, was as follows: vehicular, 301; pedestrian, 1,279; trains and switching, 33.

After full investigation, as above, the Board concluded, upon the recommendation of the Chief Traffic Officer, that the crossing would be sufficiently protected by a speed limitation on all trains operated over the crossing, of 10 miles an hour. This speed limitation was imposed by the Board, was observed by the railway company, and, as was shown at the hearing, was carried in its time-tables, effective as to all trains and movements over the crossing.

No accident is reported to the Board as having happened at the crossing which necessitated the present application.

It was admitted at the hearing, by Mr. Meredith, for the city, that the view at the crossing was fairly clear. It also was shown that although there is a substantial highway traffic, increasing by reason of the advent of the motor car and the construction of the provincial highway tributary to Dundas street, that the train traffic is just about the same as it was in 1914, when the previous order was made. The crossing is a diagonal one, and while counsel for the city admitted that the view was fairly good, he qualified that by pointing out that the visibility was impaired to some extent. The Board had the opportunity of a full inspection of the crossing, after the hearing, and, subsequently, its Engineer made a careful examination.

While the view of trains approaching from the north is very good, the view of trains approaching from the south is not so good, but they would be visible to anyone approaching the crossing on the highway—a considerable distance away—when such person is 50 feet from the crossing. The crossing is within 50 feet of the station; i.e., the station is 50 feet to the east of Dundas street, and it was shown at the hearing that all trains approaching the crossing must slow up for the station and stop at the station, which is Pottersburg. All trains going west travel only 50 feet from the station to the crossing, and they are under a speed limitation not exceeding 10 miles per hour. In addition to the above limitations of speed, it is to be observed that there is a Canadian Pacific diamond 400 yards to the north of the crossing, which necessitates all trains slowing up. The railway company states that all passenger trains stop at Pottersburg.

Having carefully considered the representations made on behalf of the city, and having viewed the crossing, and having had the advantage of a report upon the conditions from the Assistant Chief Engineer, after a personal

examination thereof, I am of opinion that there are no conditions existing which, at the present time, necessitate any further protection. As I have observed, while the street traffic is heavy, the train traffic is as light, if not lighter than it was when the application was made in 1914; and as a result of that application the speed limitation has been imposed and is now in force, both by the Board's order and in the railway company's time-tables. Under the circumstances, I do not think it is a case for an order at the present time. The speed limitation imposed, of course, will be strictly observed.

OTTAWA, December 29, 1924.

Assistant Chief Commissioner McLean concurred.

Application of Gillies Bros. Limited, of Braeside, Ontario, for interswitching facilities between the Canadian Pacific and the Canadian National Railway Lines, at Arnprior, Ontario.

File 6713.52

Heard at Ottawa, November 4 and December 2, 1924.

JUDGMENT

COMMISSIONER BOYCE:

Gillies Brothers, the applicants, are large lumber manufacturers at Braeside, Ontario, and their industry is, and for many years has been, served by spur connections with the tracks of the Canadian Pacific Railway Company, at Braeside, which place is located on that company's line three miles more or less west of Arnprior. The eastern end of the applicants' lumber yard is, it is said, 5,800 feet from the diamond at Arnprior where the Canadian Pacific is crossed by the Canadian National Railway. The applicants base their application upon the fact that, having no access to the Canadian National lines is a great drawback to them, in the matter of rates, in reaching non-competitive points on the Canadian National Railway, owing to their being subject to the combination of local rates from the furthest junction point to destination. This difference, they allege, often amounts to from six to eight cents per hundred pounds, whereas if they had interswitching, at Arnprior, they would, they say, only be called upon to pay one-half of the switching charge, which would be a minimum of \$2.50, as against the local rate. Other disadvantages to their business by the absence of, and advantages to their business which would result from interchange facilities with the Canadian National, are pointed out in the application and were emphasized at the hearing.

The application is made by the Gillies firm alone, and, apparently, for the benefit and convenience of their business, and to cheapen and facilitate the cost of it. They did not apply in the interests or on behalf of the public, and although the Mayor of Arnprior appeared at the hearing and stated that he had been authorized by his council to represent to the Board that in the opinion of the council the interchange would be in the public interest from many standpoints, he also admitted that there had been no great representations made to the council "except the simple question of Mr. Gillies asking the council if they approved or opposed the proposal." The interests of the shipping public were not stressed in support of the application and it was not made apparent that there was any public demand for the facility applied for by any other industry outside of that of the applicant. The Dochart Brick Tile and Terra Cotta Works, which had supported a previous application for interchange, presently to

be referred to, filed a consent to the transfer of their application to the site now proposed, but this firm was not represented at the hearing and no traffic figures were filed by them in support of this application.

The same applicants, under date November 10, 1913, applied for an interchange order, at Arnprior, and, after a hearing, the Board, by its judgment, dated November 25, 1914, decided that the order asked for should be granted upon the terms and at the site and upon the terms therein referred to, and pursuant thereto Order No. 23250 of the Board, issued February 1, 1915, and by subsequent Order No. 24415, dated November 8, 1915, the plan showing the proposed interchange tracks so authorized was approved upon the terms in said last-mentioned order set forth.

Under date November 12, 1915, the applicants wrote to the Board, acknowledging receipt of the last-mentioned order and expressing satisfaction with the disposition made by the Board of their application. Order No. 24415 was passed in consequence of the parties being unable to agree to the plans under Order No. 23250, and a consequent reference to and settlement by the Chief Engineer of the Board as to the location, whose report, dated April 23, 1915, is on file.

Between the date of the last of the above-mentioned orders and the date of the present application nothing was done to construct the interchange thereby authorized. It never was constructed; the reason offered on the present application being that it involved considerable capital expenditure for purchase of land, installation of tracks, etc. The present application asked for establishment of interchange in the lumber yard of Messrs. McLachlin Bros. Limited, lumber manufacturers of Arnprior, who consented to this being done.

For nine years, therefore, there was no use made of the interchange granted by the Board, in 1915, and it was admitted by the applicants at the hearing that there is no greater demand for lumber now than in 1913, the demand being about the same, and that the prospects for business in lumber now are not better than they were a few years ago, and at the present time are not bright.

The proposal now before the Board is to allow a public interchange at a point $2\frac{1}{4}$ or $2\frac{1}{2}$ miles away from the point settled by the Board's orders of 1915, and that such interchange be installed and maintained as a public interchange upon the private spur track, or siding, of McLachlin Bros. at Arnprior, which spur is subject to a lease between McLachlin Bros. and the Canadian Pacific Railway Company, in customary form, which lease contains, *inter alia*, the following clause:—

(8) "That the rights and privileges of the party of the second part under this agreement shall not be transferred or sublet, either in whole or in part, except with the written consent of the railway company; provided that the railway company shall not withhold its consent to such transfer without good and sufficient reason and the party of the second part shall have the right should the railway company withhold its consent to such transfer to appeal to the Board of Railway Commissioners for Canada."

The Canadian Pacific Railway Company, through its counsel, Mr. Wood, strongly objected to the use of this siding for the purposes of a public interchange upon several grounds, some of them pertinent and substantial, the most substantial and all embracing being that the company refused to consent to the siding being used for any such purpose. The company objected, *inter alia*, because:—

(a) A private siding was not part of the railway and was not subject to the provisions of section 253 of the Railway Act.

(b) That such a transfer would be inconvenient, unsafe, and would entail unreasonable expense and difficulty of operation upon the Canadian Pacific Railway Company.

(c) That the construction of the siding is not fitted for use as an interchange track, was not intended for any such purpose, and the tenure of the land on which it is located would be a bar to the Board in ordering its use as a public interchange track; and,

(d) That there was no public interest involved and the advantage to be derived from the interchange would be insufficient.

The objections as to inconvenience, expense, and insecurity of operation were supported in the evidence of Mr. S. W. Crabbe, Divisional Superintendent of the railway, who also pointed out that the proposed interchange would be 4.83 miles from the track connection at Braeside (that is, beyond the inter-switching area) and there is no connecting point nearer than that at which the railway company could put an engine into the interchange.

Mr. Fraser, K.C., for the Canadian National Railway, at the hearing, and Mr. Chisholm, K.C., at the latter hearing, supported the application and offered to contribute to the cost of the facility.

When the matter was first spoken to, November 4 last, it was pointed out to counsel that the consent of the McLachlin Bros. Limited, to the use of the siding for an interchange, only extended to its use by the applicants, and the further hearing of the application was adjourned until 2nd instant to enable applicants to decide as to what course they would take as to this qualified consent.

Under date November 8, 1924, McLachlin Bros. Limited filed their consent to the proposed interchange being used "by any traffic." The Canadian Pacific Railway Company, however, has contractual rights under the agreement, and it insists for the cogent reasons cited, upon its refusal to consent under the clause of the agreement I have cited.

Between the hearing of November 4 and December 2 last, the question of title was drawn to the attention of the applicants by the Board, and their attention was drawn to the ruling at Hamilton, Ontario, of the late Chief Commissioner, in the Ingersoll Interswitching Case (October 29, 1919) that until either of the railways concerned owned the land on which it was proposed to establish the public interchange, the Board was without jurisdiction to make an order against the railways. Specific reference was made to this ruling and the evidence, and it was suggested that the applicants should take legal advice thereon before coming to a hearing on December 2. The applicants, however, at the last-mentioned hearing, did not argue upon this question to show any reason why the Ingersoll ruling should not be applicable to this state of facts, and left this important question just where it was left at the previous hearing in November. Neither did the applicants argue as to the effect of the Canadian Pacific's refusal to give its consent, under section 8, of the McLachlin spur track agreement.

The private spur upon which the interchange is suggested should not, I think, in the circumstances, be subject to an order for a public interchange track. The decision of the Board in *Blackwoods v. C.N.R.*, 12 C.R.C. 45, 44 S.C.R. 92; *Kammerer v. C.P.R.*, 21 C.R.C. 74; *Beverly Coal Mines and Humberstone Coal Co. v. Grand Trunk Pacific Ry.*, 23 C.R.C. 64, and like cases, referred to generally by counsel for the Canadian Pacific Railway, are, I think, binding upon the Board, upon the particular facts before us, to the extent at least that the Board should exercise a judicial discretion as to making such an order on these facts.

I am unable to find in the evidence that public demand, or that public necessity, for the interchange at this point.

Had such evidence been presented to us, I think that the uncontradicted evidence, as to the inconvenience, expense, and danger of the operation, of such

an interchange, and as to the paucity of industries to be served by it, would justify the Board in refusing the application.

The interchange granted in 1915 was never made use of. Had there been a public demand for it, and a public injury caused by its non-existence, I think it would have been built and used. The application, so far as it at present appears, is merely to serve one industry, and to grant it in the face of the claim of its invasion of private rights, of its dangerous, inconvenient, and expensive operation, and its questionable utility, if built, would be, in my opinion, to contravene the broad principles followed by this Board in deciding questions of interchange.

Canadian Northern Ontario Railway Co. v. C.P.R., 20 C.R.C. 200.

The Board's order of 1915 provided an interchange, approved by the Board's Engineer, and acceptable to the applicants. If there were public interests then involved, that order would serve that public interest.

Gillies Bros. and G.T.R. v. C.P.R., 18 C.R.C. 44.

I am unable to come to any other conclusion than that, for the reasons above mentioned, the order asked for should not be made.

The application will be dismissed.

OTTAWA, December 31, 1924.

Assistant Chief Commissioner McLean concurred.

Application of the Salada Tea Company of Canada, Limited, Toronto, Ontario, for reduction in import rate on tea and privilege of re-packing in transit at Montreal.

File 17584

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

This application has been the subject of correspondence and hearing. The details in connection with the application are fully set out in the correspondence. The hearing added to the matter simply a discussion of the general issues involved. The issues and detail concerned are put in a condensed form in the correspondence, and may be gathered therefrom.

The first communication received by the Board from the applicant company reads as follows:—

“There appears to us to be a discrimination in certain freight rates that militates against our competing with our competitors on equal terms in certain parts of Canada.

“The rate, ocean and rail, on tea from Ceylon or India laid down in Toronto is approximately a penny farthing (1½d.). Our competitors in Vancouver can bring in tea on what is known as an import rate, hold it there for a very considerable period—quite long enough for them to blend and pack it—and then ship it down here at a rate that is practically equivalent to the above penny farthing (1½d.). As it costs us in addition 3.57 cents per pound to reach British Columbia it means that we are at exactly that disadvantage as compared with them. They can not only reach their own market for much less than we can—and this, of course,

admittedly beyond your control—but they can reach our market, apparently with your assistance, for some three and a half cents less than we can reach theirs.

“Would it not be possible for us to get this import rate made applicable from Toronto or Montreal to outward points? We shall be very glad to hear from you in this matter.”

The matter was then taken up by the Board with the Canadian Freight Association which replied as follows:—

“In reference to your communications of March 5 and 21, file 17584, in the matter of rates on tea from Toronto or Montreal.

“The Salada Tea Company of Canada, Limited, make the statement that the rate, ocean and rail, on tea from Ceylon or India laid down in Toronto is approximately a penny farthing per pound, and that their competitors in Vancouver can bring in tea at what is known as an import rate, hold it at Vancouver for a very considerable period, blend and pack it, and then ship it to Toronto at a rate that is practically equivalent to the rate in effect from Ceylon or India to the Atlantic coast, plus the rail rate to Toronto, i.e., a penny farthing per pound.

“The current rate on tea from Calcutta to Montreal and Toronto via Vancouver is approximately \$2.30 per 100 pounds. The current rate from Colombo, Ceylon, to Montreal and Toronto is approximately \$3.15 per 100 pounds, a higher rate from Ceylon being occasioned by the steamer rate up to Hong Kong.

“The rate on tea from Seattle, Tacoma, Portland, Ore., and other Pacific coast ports to Eastern United States points is the same as from Vancouver to Eastern Canada, namely, \$1.50 per 100 pounds, see Countiss' Eastbound Import Tariff 30-1, C.R.C. 447.

“No Calcutta or Colombo teas destined to points east of Fort William move via Vancouver. The only teas moving through Vancouver to points east of Fort William are Japan and China teas, and if the Canadian transcontinental lines are to handle any of those China and Japan teas it is necessary that they protect the current rate of \$1.50 per 100 pounds for the rail haul. This rate is necessary on account of the competition of steamers operating from Japan and China to the Pacific coast in connection with the inter-coastal lines, and also the direct lines running from China and Japan through the Panama canal to the Atlantic coast. If it were possible to do so, the Canadian Railways would have no objection to limiting the application of the present import rate on tea to shipments originating in China and Japan. In actual practice the rate is limited in this manner for the reason that the Indian and Ceylon teas move to the Atlantic coast by the all water route. If the railways cancelled the rate of \$1.50 from Vancouver to Eastern Canada it would not in any way change the present situation, that is, China and Japan teas could still be laid down in Eastern Canada at the present rate. The only result would be that the Canadian railways would lose the haul to either the all water lines or the United States transcontinental lines.

“We submit, in view of the above facts, that the rate of \$1.50 per 100 pounds from the Pacific coast to Eastern Canada does not in any way prejudice the position of the tea companies in Eastern Canada handling Calcutta and Colombo teas.

“A copy of this letter has been sent to the Salada Tea Company of Canada, Limited.”

Some correspondence then took place between the Board and the Canadian Freight Association with the intention of bringing about a clearer joinder of issues. The next communication is a letter from the Canadian Freight Association as follows:—

“In reply to yours of July 23, file 17584, in the complaint of the Salada Tea Company of Canada, Limited, regarding import rates on tea.

“The memorandum attached to Mr. Larkin's letter of July 16, to the Board indicates that the Salada Tea Company object to the present import freight rate from Vancouver on tea originating in Ceylon and India, which is held in Vancouver for processing and repacking and reshipped to points in Western Canada. They also object to bulk tea moving under special import rate from Vancouver to Eastern Canada, and they ask for similar import rates and privileges on import tea held at Montreal, which may ultimately be shipped to points West of Fort William.

“My letter to Mr. Richardson dated March 27, 1923, sets forth the position of the railways in connection with these rates.

“Our information is that the present approximate rate on teas originating in Calcutta, destined to Montreal via Vancouver, would be \$2.30 per 100 pounds, and from Colombo, Ceylon, \$2.56½ per 100 pounds while the rates from Calcutta to Montreal via the Atlantic seaboard, taking Boston as the port at which the ship would dock, is \$1.95 per 100 pounds, and from Colombo \$1.20½ per 100 pounds.

“Since my letter of March 27, 1923, we find on checking the records that no teas originating in Calcutta or Colombo have moved via Vancouver to points in Eastern Canada. The only teas moving through Vancouver to points in Eastern Canada being those originating in China and Japan.

“Tracing the history of the import rates via the Pacific back for ten years, we find that Countiss' Import Eastbound tariff No. 26-A, C.R.C. 329, effective March 17, 1914, provides under Clause No. 1, page 11, application of rates as follows:—

‘The rates authorized herein will be applied only when satisfactory proof is furnished initial rail carrier, party hereto, that shipments originated at Asiatic points, Philippine Islands, Australia, New Zealand, or Fiji Islands, or beyond, and on shipments originating in Mexico, when so specifically shown in individual rate items.’

“This clause permitted the application of the import rates on traffic, if taken into the consignees' warehouses at the Pacific coast ports, provided satisfactory proof that the shipments were imported was furnished. This tariff applied from all Pacific coast ports, including Vancouver, Seattle, Portland and San Francisco. This arrangement ran along until the 1st of August, 1916, when in Countiss' Tariff 26-D, C.R.C. 364, the application of rates was changed to provide that in order to obtain the benefit of the import rates shipments had to be made within eighteen months and then only when such shipments were made in the original packages in which the articles were imported. An exception, however, was made in this tariff under item 575 applying on tea and tea dust in packages, by the following note:—

‘Rates named will also apply on shipments of tea processed and repacked at port of entry and delivered to rail carriers within twelve months from date of arrival at port of entry.’

"The current tariff is Countiss' Import Tariff No. 30-K, C.R.C. 462, effective September 14, 1923, which carries the same clause, except that the arrangement applying on processed tea applies only to points in Western Canada, and does not apply to points in Eastern Canada, shown on pages 21 to 24 inclusive, located on the Canadian Pacific and the Canadian National Railways. This change was made in an endeavour to satisfy the Salada Tea Company in the spring of 1923. This arrangement, of course, applies from United States Pacific ports to all United States points.

"Thompson's Import Tariff 110-A, C.R.C. 147, effective August 4, 1923, carries the current rates to points in Western Canada, see item 250, which provides for import rate—carload \$1.50, less carload \$2, to points in Western Canada designated on page 7 of the tariff, with the provision,—

'Rates named will also apply on shipments of tea processed and repacked at port of entry and delivered to rail carriers within twelve months from date of arrival at port of entry'.

"With reference to rates on bulk teas which move through Vancouver in their original packages. The Salada Tea Company in their complaint refer altogether to teas originating in India and Ceylon, and as has been pointed out above, the Canadian lines have not carried any such teas destined to points in Eastern Canada through Vancouver during the past two years. It is, therefore, plain that our import rates from Vancouver to Eastern Canada on tea in original packages of \$1.50 carload and \$2 less carloads do not in any way injure the Salada Tea Company, but they do permit the Canadian railways to handle shipments of tea originating in China and Japan destined to Eastern Canada, in competition with the all water carriers from China and Japan, through the Panama canal to the Atlantic coast.

"The Salada Tea Company ask that rates be so made as to allow them to bring in teas originating in the Far East to Montreal and then ship back to Western Canada in competition with Vancouver, notwithstanding that the mileage to Montreal and back to Western Canada exceeds, by a very large figure, the mileage through Vancouver.

"In reference to the import rates on tea which may be processed and repacked at Vancouver and forwarded to points in Western Canada. As it has been pointed out, this arrangement has been in effect from all Pacific coast ports, including Vancouver, Seattle, Tacoma, San Francisco, etc., for a great many years, and the Canadian lines simply followed the American transcontinental lines in this matter in order to protect their interests in a competitive manner.

"The situation at the present time, as it appears to the carriers, is that on Indian and Ceylon teas in the original packages, the Salada Tea Company in Eastern Canada have no competition from Western Canada, neither have they any competition in Eastern Canada on teas processed and repacked at Vancouver, because as explained above, the special tariff applying on repacked teas from Vancouver does not apply east of Port Arthur. They are asking, however, that they be given similar rates and privileges so that they may ship to Western Canada in competition with companies who have been supplying tea to that territory for a great number of years. The carriers feel that the present adjustment should be satisfactory to all concerned, but if the Board in their judgment feel that the Salada Tea Company or other doing business through Montreal, should be given similar rates and privileges on teas imported through the Atlantic Coast, destined to Western Canada, as now obtains from Van-

couver, they will have no alternative but to withdraw the privilege to tea importers located at Vancouver now have and charge the full domestic rate on any tea which may be imported and processed or repacked at that point.

"A copy of this letter has been forwarded to Mr. Gerald Larkin, President of the Salada Tea Company, at Toronto."

In reply to this the applicant wrote as follows:—

"We have received a copy of a letter dated August 15, written to you by the Canadian Freight Association. It is in defence of their policy of giving a rate on tea which is lower when it is shipped from the west to the east than when it moves in the other direction across the Dominion.

"I have numbered the paragraphs in their letter, and think the best way to reply to their arguments is to deal with them in order.

"Their Paragraph No. 4.

"We do not know the rates from Calcutta and Colombo to Montreal, via Vancouver, so we take those quoted by the C.F.A. for granted. In the case of the rate from Colombo to Montreal, via Boston, we think they have made a mistake when they quote \$1.20½ per hundred pounds, for it should be \$2.20 per hundred pounds gross. Besides this, we would ask why, when they are discussing teas from Colombo and Calcutta to Montreal, via Atlantic Ports, do they take Boston as the point of transshipment? No one would import tea that way because they would lose the preferential discount of 10 per cent on the duty which is granted to importers via Canadian ports.

"Their Paragraph No. 5.

"We maintain that their contention that no Ceylon and Indian teas have moved, of late, via Vancouver to points in Eastern Canada is irrelevant. In the first place, they might at any time, while in the second place, China and Japan teas are just as much opposition to us as Ceylon and Indian. Besides that, it is not only discrimination down here that we are objecting to, but we are complaining of that which is made in favour of Vancouver importers to points in the Prairie Provinces.

"Their Paragraph No. 10.

"In our memorandum of July 17, which was attached to our letter of the 16th, we did specifically mention Ceylon and Indian teas, but only because these and the teas from Java are the only ones we handle, and we, therefore, usually think in terms of these teas, but the fact remains that China and Japan teas are in active competition with us. We do not ask for protection against them, but we do object to the unfair advantage being given to dealers in these teas. This we consider a most important point, because the Canadian Freight Association in their letter to you constantly lay stress on the fact that we are only interested in Ceylon and Indian teas.

"Their Paragraph No. 11.

"The C.F.A. facts here are quite incorrect. We ask for nothing more than is given Vancouver importers, and we would respectfully point out that Winnipeg is closer to Montreal than it is to Vancouver over the Canadian National Railway, while it is about midway on the Canadian Pacific Railway. In addition, there is between Vancouver and Winnipeg, the very expensive haul over the Rocky mountains.

" Their Paragraph No. 12.

"The fact that the import rate has been in effect for some years has nothing to do with the case. The length of time it may have been in force has no bearing on the justice of it.

" Their Paragraph No. 13.

"We wish to object emphatically to an endeavour being made by the C.F.A. to narrow the argument down to a question of Eastern vs. Western Canada. Our business is throughout the entire Dominion, and we do not suppose for a minute that it is in the interests of the public policy to set up barriers between one part of this country and the other.

"We also beg that they be not allowed to confine it to Ceylon and Indian teas; Japan and China teas are just as keen opposition to us as British-grown teas.

"We are not asking for any special privileges as the C.F.A. infer; we are only asking for the same rate on the Atlantic coast as is given to Vancouver importers, *and for all we know to any importer west of the Great Lakes.*

"Their contention that we want to compete with people who have been supplying certain districts with tea for years is one that we do not think will meet with your approval, for, after all, trade is supposed to be free throughout Canada. We may also say that we have been selling in Western Canada very much longer than many of the people who are now in business out there.

"We think that the best way we can place the unfairness of this whole matter before you is to give you certain figures. If you will take those contained in paragraph 4 of the C.F.A.'s letter to you of August 15, you will see that the rate quoted at which teas from Colombo, Ceylon, via Vancouver, can be laid down in Montreal is \$2.56½ per hundred pounds. Presumably, they can be laid down in Winnipeg for considerably less than that, although the C.F.A. does not give you that information; in Regina for less again, and in Calgary and Edmonton for still less. In our case importing via Canadian Atlantic ports (such as Halifax) to Montreal, the cost is 91s. 6d. per ton of 50 cubic feet. Fifty cubic feet of tea weighs 1,000 pounds gross, and 91s. 6d. at \$4.50 exchange for 1,000 pounds gross makes \$2.05 per hundred pounds. The carload rate, all rail, from Montreal to Winnipeg is \$1.78½ per hundred pounds. To this add the \$2.05 and you arrive at \$3.83½ for freight from Colombo to Winnipeg. Against this Vancouver is allowed to lay down in Winnipeg for, at most \$2.56½, and, perhaps, as we say above, even Winnipeg importers are allowed to bring their tea in there at that rate. This puts us at a disadvantage of \$1.27 on every hundred pounds, and yet the rail haul from Montreal to Winnipeg is 193 miles less than from Vancouver to Winnipeg and on the latter run is the expensive haul over the mountains."

In the discussion at the hearing the situation was put very clearly and frankly by Mr. Larkin, the President of the Salada Tea Company. The two points involved are (1) an application that the same import rate apply west-bound on tea from the port of Montreal as is given eastbound from Vancouver; (2) that the same treatment be given in the East as is given Vancouver in regard to tea stopped off and repacked at Vancouver.

In regard to the import rate on tea via Vancouver, it is admitted by the railways that there is a special import rate of \$1.50 per 100 pounds, in car lots from United States Pacific points to the Atlantic coast, applying also to intermediate points. The railways contend that it is on account of competitive

conditions that the same rate has been applied from Vancouver eastward. In addition, there has been established the privilege of allowing tea to be processed (that is blended and repacked) at Pacific coast points. If this tea so processed is forwarded within twelve months from the date of entry the \$1.50 rate applies. This was established in 1916 by American lines running from San Francisco and Puget sound. It is stated in evidence that the custom grew up in the first instance at San Francisco on account of the delays pending clearance by the customs, and that the outcome of this was that the railways allowed the tea to go into warehouses and the warehouse period was set at twelve months. The situation so created at American ports extended by way of competition to Vancouver.

In July of 1923 the \$1.50 rate on processed tea, so far as the movement eastward in Canada was concerned, was limited to Fort William, and so far as Canadian National and Canadian Pacific points were concerned was eliminated from the tariff applying from the United States Pacific coast. No change was made on the bulk teas; that is, the teas moving in original packages. It was set out that the railways handled through Vancouver a very large tonnage of bulk teas moving to United States points, and also some to Eastern Canada, and that if the rail rates were cancelled the only result would be that these teas would move through the Panama canal or American channels to Eastern United States points, or even to Canadian points at the same rate, namely, \$1.50.

The Canadian Pacific is at present handling teas from China and Japan which, when they arrive at Vancouver, are transferred into coastal steamers and brought around to the United States Atlantic coast points. At the same time there is a large tonnage being handled by the Canadian Pacific to the Central United States, and also a considerable movement to the United States Atlantic points. The extent of this all-rail movement, as compared with the water movement, depends upon the question of time and service.

The Canadian Pacific Railway contends that the rate on bulk teas is absolutely necessary in order to enable the Canadian railways to handle these teas through to the Eastern United States and Eastern Canada in competition with all water.

The applicant, in arguing that the same rate should apply westbound as eastbound, referred to Winnipeg as an evidence of the disadvantage to which the existing rate adjustment subjected him at present. He said that Winnipeg, taking Canadian National mileage, was about midway between Montreal and Vancouver; and he stated that his company was at a disadvantage of 2 cents a pound there. The representative of the Canadian Pacific Railway stated that the difference was 1.43 cents. There was a lack of unanimity as to the difference, but it was conceded that there is a difference. Later the applicant referred to the difference as $1\frac{1}{2}$ cents.

The applicant has a warehouse in Montreal. The movement by water in the open season of navigation to this warehouse is important. It was not stated just what proportion so moved; but it was stated the open season was the important part of the movement. It is represented that with the adjustment of rate asked for the western business could be handled from Montreal.

In the phase of the application dealing with the time during which tea can be held for processing it was asked that a limited period, stated at three months, be allowed in Montreal so that the applicant could benefit by it when packing and shipping for the West. There was not much discussion regarding the question of stop-over in the East for the processing. The applicant said he did not ask for Montreal only, but he thought that any eastern importer, or any eastern port should have the same privilege as the western port. There is no such arrangement existing in the East. The general argument of the railway was that the rate and privilege referred to were the outcome of competitive conditions.

The applicant does not contend that the rate he is paying is unreasonable in itself, nor does he attempt to adduce evidence bearing upon any alleged detriment accruing to him from the difference in rate basis eastbound as compared with westbound. The applicant is very frankly and fairly putting forward his desire to have a more extensive territory westward tributary to his business. His recognition of the competitive factors entering in appears throughout his presentation. At p. 9217 of the evidence he recognizes that tea will move to some extent over American railroads unless the Canadian road can compete from Vancouver; that is to say, it will pass through Seattle and San Francisco. At p. 9218, in response to a question of mine as to whether he recognized that there was any special competitive condition applying on the movement of tea eastbound, he replied, "Oh yes, I understand their point of view." To a further question reading as follows: "Do you, in contending that your rates westbound should be adjusted so that you can do business in the West, do you contend that there are similar competitive conditions affecting rates westbound?" To this he replied, "No. In other words the railroads have had to give this rate eastbound, they have not westbound." He was asked whether he contended the railways, in meeting water competition, had gone down to too low a point in the rate from the West. He replied, "Not to too low a point if they have to meet competition, if that is considered advisable they have to meet it on equal basis." The matter from the applicant's standpoint was put in a summary way at p. 9219 of the evidence which follows:—

"The ASSISTANT CHIEF COMMISSIONER: Well, it narrows down to this; there is a competitive situation affecting the rates eastbound from Vancouver, you recognize that. You do not contend that the railways have gone down too low in reducing rates to meet that competition. You recognize that there is not a similar rail or water competition from Eastern Canada westbound.

"But you approach it, not from the standpoint of railway competition, but you say the railways have put it on a competitive basis eastbound, and the result is you are hampered in doing business in territory west?

"Mr. LARKIN: Entirely, that is the exact situation. In order to meet their difficulty they have put us in a difficulty."

Under the Railway Act and the decisions thereunder, the railways may meet water competition, but it is not the privilege of the shipper to demand less than normal tolls because of such competition, which the railway in its discretion does not choose to meet. *Blind River Board of Trade v. Grand Trunk, Canadian Pacific Ry., Northern Navigation and Dominion Transportation Cos.*, 15 Can. Ry. Cas., 146; *Bowlby v. Halifax & South Western Ry. Co.*, 20 Can. Ry. Cas. 231; *Nanaimo Board of Trade v. Canadian Pacific Railway Co.*, 23 Can. Ry. Cas. 92.

It has been pointed out that the company's untrammelled right to meet or disregard competition is subject to this qualification—that after having elected to meet any competition on its system in a district where similar operating and traffic conditions obtain, the competitive rate should be extended to such other points in the common district. See *Nanaimo Case* at p. 98, referring to *Midland Lumber Shippers v. Grand Trunk Ry. Co.*, 22 Can. Ry. Cas., 387. Subject to this qualification the railways have, under the Railway Act, a wide discretion in meeting water competition.

It is frankly admitted by the applicant that the rate adjustment and privilege attaching thereto on the movements eastbound which he seeks to make the measure of what should be done westbound are the outcome of a competition both by water and by American rail carriers which do not exist in connection

with the movement westbound from Montreal. The applicant does refer to a disadvantage of $1\frac{1}{2}$ cents per pound at Winnipeg; but I do not understand that he is advancing this as evidence of unjust discrimination. What he is really concerned with is greater distributing territory westward. Since he does not attack the existing rate westward as being unreasonable in itself, and since he admits that the rate adjustments eastbound are due to special competitive conditions, I am of the opinion that the application must fail.

OTTAWA, December 31, 1924.

Commissioner Boyce concurred.

Application of the Canada Cement Company, Ltd., Montreal, Que., for a ruling by the Board that the legal rate on Gypsum Rock, Caledonia, Ont., to Belleville, Ont., and Montreal, Que., between January 1, 1921, and March 21, 1924, was the rate published by the Michigan Central Railroad Company from Lythmore, Ont., to the same points, governed by the long and short haul clause of the tariffs and Sections 314 and 329 of the Railway Act, 1919.

File No. 32944

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The application is for a declaratory order defining the rate legally in force from Lythmore, Ont., to points referred to in the application and during the period January 1, 1921, to March 21, 1924. It is contended that under the long and short haul provisions of the Railway Act the rate from Lythmore, Ont., is the maximum on movements from the intermediate point, Caledonia, Ont., to the destinations in question; and, presumably, it is the intention that if such declaratory order is obtained, and if an adjustment is not obtained from the railway, to take up in the courts the question of a refund of the difference between the rate as charged from Caledonia to the destinations involved, and the rate legally operative as a maximum from Lythmore to the same destinations.

The question involved has to some extent been dealt with in:—

Application of the Canada Cement Co., Ltd., for adjustment of rates on Gypsum Rock, in carloads, from Caledonia, Ont., to Montreal, Que., and Ottawa, Ont., on a basis not to exceed the rates now in effect on Crushed Stone; and

In the matter of Order of the Board No. 34341, dated Oct. 20, 1923, suspending M.C.R. Co's Supplement No. 69 to tariff C. R. C. No. 3074, effective November 3rd, 1923.

Board's Judgments and Orders, Vol. XIII, p. 317.

There was, *inter alia*, involved therein the question of the long and short haul clause. It was alleged by the Michigan Central that the rates operative from Lythmore were erroneous in that through oversight the increases authorized by the Board in various decisions had not been applied to the rate effective. It was further contended by the Michigan Central that the movements from Lythmore were so limited in quantity that there was nothing in the traffic situation to especially attract the attention of the railway to the erroneous rate quotations. The details in this connection will be found on pp. 319, 320 of the judgment above referred to.

The Board held that under the general rate orders existing, the rates as published from Lythmore were erroneous. As pointed out in the judgment, the Michigan Central, when the application was launched in 1923 and when its attention was drawn to the rate situation, endeavoured to rectify it by filing a tariff on a basis in accordance with the rate increases sanctioned by the Board.

The applicant company, which is also the applicant in the present application, contended that the existing lower level of rates from Lythmore was material to the presentation of its case and that, therefore, the increased rate should not be allowed to become operative pending decision.

The Board, with some hesitation, suspended the rate increase in question. In the decision, after setting out, as above mentioned, that the rate adjustment as published from Lythmore was erroneous, it continued and said that the order which had suspended the cancellation of the lower rate should, so far as gypsum rock is concerned, be rescinded; and further stated that in view of the action thus recommended the rate published in error from Lythmore cannot be taken as a measure of what the rate from Caledonia should be to Montreal and Ottawa; that is to say, the railway was allowed to publish for the future a rate basis increased by the advances found reasonable by the Board.

The present application is for a declaratory order in regard to a past situation.

The movement from Lythmore, on the Michigan Central, to the Grand Trunk points concerned was through Hagersville. The distance between Lythmore and Hagersville is approximately seven miles. Hagersville is also a Grand Trunk point; and from this point to Caledonia, on the Grand Trunk, is approximately ten miles.

The rate from Lythmore to Montreal, taking this as an example, was, on account of the increases already referred to not having been applied, standing at 16½ cents on one occasion and 17½ cents on another. The detail is contained in the tabular statement set out on page 319 of the judgment as above referred to. Under the increases, the rate would have been 22 cents. During the same period, the rate from Caledonia on the Grand Trunk to Montreal was 19½ cents.

The practice and decisions, both of the United States Supreme Court and of the Interstate Commerce Commission, in connection with the long and short haul clause of the United States' Act to Regulate Commerce, and amending legislation, were referred to in the course of the hearing in the present application. *The Parrington Case*, which is published in summary form in *The Traffic World of April 12, 1924*, and in which decision was rendered by the United States Supreme Court in April, 1924, was referred to by counsel for the railway. What was involved therein was the question of reparation in connection with a violation of the long and short haul clause. The Supreme Court held that while a charge not permitted by the long and short haul clause of section 4 may subject the carrier to prosecution by the Government, such disregard of the 4th section did not afford adequate basis for reparation where there was no other proof of pecuniary damage. Continuing, the Court pointed out the difficulty which might arise in connection with erroneous rate quotations, and used the following language in this connection:—

“The rule adopted by the Commission follows the logic of the opinion relied upon and can be readily applied. The contrary view would not harmonize with other provisions of the Act, and, put into practice, would produce unfortunate consequences. . . . If a lower rate published without authority becomes the maximum which may be charged from

any intermediate point, mistakes in schedules (and they are inevitable) may become disastrous. Suppose the rate from an obscure point in Maine to San Francisco via Boston, New York, and Chicago, should be printed at \$15, instead of \$150, and the error remained undiscovered for many months, could all who had paid more than \$15 for passage along that route recover the excess without proofs of pecuniary loss?"

It will be noted, therefore, that what was specifically before the court was the basis of reparation; and putting it in a summary way, the finding was that damage affording a basis for reparation is a matter of evidence, not of presumption.

A similar case was before the Interstate Commerce Commission in *Oregon Fruit Co. vs. Southern Pacific Co. et al*, 50 I.C.C., 719. In this case, carload rates for the transportation of water melons from Sultana and Monson, Cal., to Salem and Medford, Ore., were found to be in violation of the long and short haul clause. Medford and Salem were intermediate to Portland from Sultana and Monson. At the time the shipments moved, there were in effect to Portland rates of 45 cents from Sultana and 47½ cents from Monson. The rates contemporaneously in effect from Sultana to Salem and Medford were 51 cents and from Monson to Salem 50 cents. At p. 722, the opinion of the Commission was set out:—

"There is no proof that the complainant has been in any wise damaged by the maintenance of the lower rate to Portland."

On the same page, the ruling of the Commission in regard to reparation was set out as follows:—

"In the absence of proof of damage to the shipper, the fact that carriers have charged or received rates which violate the long and short haul rule of the 4th section of the Act is not of itself a sufficient basis for an award of reparation."

See in this connection the citations given on the same page.

Reference may also be made to *John Nix & Co. et al v. Southern Rd. Co. et al*, 31 I.C.C., 145; and to *Iten Biscuit Co. v. C.B. & Q. Rd. Co. et al*, 53 I.C.C., 729.

So far, then, as the American legislation is concerned, it would appear that the ruling of the United States Supreme Court upholding various rulings of the Interstate Commerce Commission is concerned with the matter of reparation; and it would appear that the remarks as to the status of rates published in error are also concerned with the question of the basis for reparation.

The long and short haul provisions of the Railway Act differ in various respects from the provisions of the similar legislation contained in the United States' statutes. Subsection 5 of section 314 reads as follows:—

"The Board shall not approve or allow any toll, which for the like description of goods, or for passengers carried under substantially similar circumstances and conditions in the same direction over the same line or route is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the Board is satisfied that, owing to competition, it is expedient to allow such toll."

The subsection contains what is in effect a general rule, that where there is a movement in the same direction "over the same line or route", under substantially similar circumstances and conditions, the charge for the shorter distance shall not be greater than that for longer distance, within which such shorter distance is included, unless the Board is satisfied that owing to competition it is expedient to allow said toll.

Subsection 3 of section 329, dealing with special freight tariffs, contains the following provision:—

“

“And greater tolls shall not be charged for a shorter than for a longer distance over the same line in the same direction, if such shorter distance is included in the longer.”

Subsection 3 of section 329 imposes an obligation on the railway. While, as already pointed out, subsection 5 of section 314 lays down a general rule, it is done by imposing an obligation on the Board, i.e., “The Board shall not approve or allow any toll....” Subsection 5 of section 314 is general in its scope and might be assumed to cover the subject matter of special freight tariffs as well. But the reference in section 329 to the long and short haul provision as affecting special tariffs would seem to raise some doubt in this connection.

Further, subsection 3 of section 329, in dealing with the long and short haul provision, provides that a greater toll shall not be charged for a shorter than for a longer distance, “*over the same line in the same direction.*” Section 314, subsection 5, has a provision “*over the same line or route.*” The words “or route” it will be noted are not contained in subsection 3 of section 329.

The amendment by adding the words “or route” to section 314 was made in 1919, and from the draftman’s notes the reason was to make the context clearer. While there is thus some uncertainty as to the relative scope of the two sections, it may be noted that by a tariff circular of the Board, approved under General Order No. 398 of April 11, 1924, section 38 provides as follows:—

“Section 329, subsection 3, of the Railway Act, in connection with special tariffs, provides that greater tolls shall not be charged therein for a shorter distance than for a longer distance over the same line, in the same direction, if such shorter distance is included in the longer distance. Tariffs issued between specific points in Canada containing rates which are not competitive under section 329, subsection 4, shall contain the following clause:—

‘The rates named herein unless specifically indicated are maximum rates and must not be exceeded in the same direction from or to any intermediate point in the direct line of transit.’”

The Michigan Central tariffs C.R.C. 2988 and 3074, which were in effect during the period in question, were joint tariffs applying from stations on the Michigan Central and other specified initial lines to points in Ontario, Quebec, and the Maritime Provinces, on various commodities.

A general concurrence form of the Grand Trunk Railway System, G.C. No. 23, filed in favour of the Michigan Central reads as follows:—

“This is to certify that the Grand Trunk Railway System (east of Detroit and St. Clair rivers) assents to and concurs in all joint tariffs and supplements thereto that may hereafter be published and filed by the Michigan Central Railroad Company in which this company is named as a party thereto, in so far as such schedule contains rates which apply within Canada to or via (not from) this company’s points.”

It would appear that not only was there an erroneous rate basis from Lythmore, so far as the Michigan Central was concerned, but also so far as tariff inter-relations between the Michigan Central and the Grand Trunk were concerned, the concurrence limited its scope to traffic moving “*to or via*” (not from) Grand Trunk Railway points; and as the Grand Trunk did not file as

an initial carrier under a C.R.C. number, it would appear that, as a matter of tariff construction, the rule on p. 18 of the tariffs as to application of rates from intermediate stations could only have been intended to apply to stations on the lines of the initial carriers who filed said tariffs under their C.R.C. numbers. The rule reads:—

“Except as otherwise specifically provided herein, the rate from any station from which a rate to the destination station of the shipment is not published in this tariff, which is directly between two points from which rates are named, will be the same as from that point from which the higher rate is published. If the station is directly between two points from which the same rate applies, such rate will also apply from the intermediate station. If the station is not located between two points from which rates are published herein to the destination station of the shipment, the rate will be the same as from the next named point beyond.”

“Exception.—The above will not apply when, if by the use of class rates a lower rate can be obtained than under this rule.”

The Michigan Central in a written submission states:—

“It is our view that the clause published on page 18, Michigan Central C.R.C. 3074, as to the application of rates from intermediate stations, can have no bearing whatever as to the legal rate to apply from Caledonia because the Michigan Central is not authorized to publish rates from stations on the Canadian National Railways. This intermediate clause applies only from stations on the Michigan Central, and for the account of the railroads for which the Michigan Central issues rates and which roads file Michigan Central C.R.C. 3074 with the Board for their account. The tariff clearly shows that it does not apply from stations on the Canadian National Railways.”

The Interstate Commerce Commission in dealing with infractions of the long and short haul clause has held that a merely theoretical or paper rate that has not been used and which was unknown to the defendant until casually discovered will not be accepted as affording a just basis for an order for reparation, on shipments made to an intermediate point at a slightly higher rate. *Missouri & Kansas Shippers' Assn., vs. M.K. & T. Ry. Co., 12 I.C.R., 483.*

In the case in question, shipments of hay were made from various points to Kansas City. St. Joseph, a point 63 miles beyond Kansas City, had a rate lower than the Kansas City rate. It would appear that for many years there had been no movements of hay from the point in question to St. Joseph and, consequently, no commodity rates had been put in. When hay was offered to move from the point in question to St. Joseph, the railway established a commodity rate somewhat higher than the rate to Kansas City. The Commission, at pp. 484-485, used the following language:—

“Although it is clear that the Class C rate was a paper rate only, so far as hay was concerned, and that the breach by defendant of the provisions of section 4 was therefore purely technical and in no sense substantial, the object of this petition is to take advantage of the situation and to secure reparation on shipments that moved to Kansas City, while the defendant inadvertently permitted its tariffs to remain in that condition.

“While its procedure is to some extent judicial in nature, the Commission is essentially an administrative body; and in the adjustment of contentious proceedings of this kind it ought to examine into the real substance of the matter unembarrassed by considerations that are purely technical. Looking at the complaint from this point of view, it seems

to us wholly without merit. We are unable to accept a merely theoretical or paper rate, for the longer haul, that has not been used and was unknown either to the defendant or to the complainant, until casually discovered after it had been the published rate for some years, as affording a just basis for an order for reparation on shipments made to an intermediate point at a slightly higher rate. This view of the matter is supported by the uncontradicted evidence of the defendant, tending to show that Class C rate of 10 cents to St. Joseph was not a compensatory rate on hay, and by the complete failure of the complainant to show that the rate to Kansas City was in itself excessive. That issue although raised in the complaint was abandoned on the hearing.

"The petition must be dismissed and it will be so ordered."

It is, of course, to be recognized that these remarks deal with reparation procedure. The Board has no power to deal with reparation or to direct refunds; and unless the Railway Act so permits, it has no power to consider whether the rate at a longer distance point involved in a long and short haul matter, is a paper one or not. The Board's powers, as herein invoked, are limited to declaring what the lawful rate was or should have been—(1914) A.C., 1022.

Lythmore is some 17 miles from Caledonia. The traffic in gypsum rock originating at Lythmore and moving to the destinations involved is light. In 1921, while no detail is given, there is said to have been little or no movement; in 1922, two cars moved; in 1923, one car moved from Lythmore to Montreal on October 20, 1923. This movement took place while the application was pending, and after the application dated October 9, to suspend the supplement cancelling the lower rate basis had been received by the Board.

So far as the evidence submitted warrants a conclusion, Caledonia is a much more important point of shipment of gypsum rock than Lythmore. The evidence submitted in the earlier case is that the movement from Lythmore is light and infrequent.

The Grand Trunk alleges that it was unaware of the erroneous rate from Lythmore, until the mistake was brought to its attention by the applicant. The applicant's reply is:—

"The Canadian National Railways was a party to the tariffs of the Michigan Central Railroad Company; they duly received copies thereof, and had every opportunity to check and advise the Michigan Central Railroad if they had any objections to the rates published therein. Under these conditions, the Canadian National Railways are equally responsible with the Michigan Central Railroad for the rates published from Lythmore, Ont."

In a communication on file from the Grand Trunk, it is represented that the claims outstanding amount to some \$41,000. This phase of the matter was not gone into, the Board having no jurisdiction in regard to the claims in themselves. It was, however, intimated by the applicant that the amount involved was less than this; but it was not indicated how much less. Dealing with this phase of the matter, the railway set out—

".....It seems.....highly improper that the inadvertent action of the Michigan Central should be held to saddle the Canadian National Railways, and as a matter of fact, the people of this country, with the loss of some forty or fifty thousand dollars they have no moral right to..... It does not seem to be proper that an action of this kind on the part of the Michigan Central, or any other railroad should be allowed to seriously deplete the revenues of another railway whose rates are adjudged to be reasonable."

While the matter was thus strongly argued from the standpoint of the equities concerned, and while stress was laid in other portions of the arguments on the position that it was inequitable to make the Canadian National, the successor of the Grand Trunk, responsible for the inadvertent action of the Michigan Central, I am forced to conclude that under the provisions of the Railway Act applicable to the matter involved, the Board is precluded from giving weight to these arguments.

So far as the rate from Caledonia, Ont., on the Grand Trunk System, to Montreal, on the same system, is concerned, it is not contended that this rate is of itself unlawful. There is nothing to show that there was any illegality in regard to the filing and publication of this rate, nor was it so contended. Further, it is not shown that the original rate, prior to the increases allowed by the Board had been successfully attacked as being unreasonable; and it is not contended that the rate as now operative is not a result of this original rate being increased by additions found reasonable by the Board.

This was the condition during the period covered by the application and in respect of which a declaratory order is asked for. During the same period there was published and in existence from Lythmore, on the Michigan Central, to Montreal, on the Grand Trunk System, a rate legally filed and published but which had not been increased in accordance with the increases allowed by the Board.

The rate in question complied with the statutory provisions as to filing and publication.

As has been indicated the applicant invokes the long and short haul provisions of the Railway Act as controlling the rate from Caledonia.

It was held in the *Stoy* case that the Board had power to declare what the lawful rate was, or should have been, leaving the parties to whatever redress they might be entitled to consequent upon that declaration.

British American Oil Co. v. Can. Pac. Ry. Co. 12 C.R.C. 327, at p. 331;

British American Oil Co. v. G.T.R., 9 C.R.C. 179, at p. 190; (1914) A.C. 1022.

In the *Stoy* case, however, what was involved was a narrow question of law involving the provisions of the Railway Act as applicable thereto, and not going beyond these provisions. There was no reference in the judgments to matters of equity being involved. There was not, in fact, any allegation that there were matters of equity involved.

In the present case there is an application for a ruling as to the lawful rate. The answer of the railway turns on matters involving jurisdiction in equity and seeks equitable relief on the ground of mistake, not of its own action, but due to the action of the Michigan Central Company, by which it may be bound.

While the answer thus involves consideration of the principles of equity the jurisdiction of the Board is limited to the consideration of what falls within the scope of the Railway Act. The Board is given no jurisdiction in equity and therefore the pleas in equity advanced by way of answer do not fall within its jurisdiction.

It would not appear reasonable or proper that because the applicant has invoked the jurisdiction of a tribunal whose powers are thus limited the railway company should be precluded from such consideration as may be proper being given to its answer. And it would therefore appear that since in the case as presented pleas both in law and in equity are adduced the Board should not, by ruling on the one phase of the matter falling within its jurisdiction, preclude

action being taken in a court of competent jurisdiction whose powers are such as to permit it to consider both the questions of law and of equity involved. The parties should be so informed.

December 31, 1924.

Commissioner Boyce concurred.

ORDER No. 35937

In the matter of the application of The Express Traffic Association of Canada for approval of Supplement No. 3 to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.78.

MONDAY, the 29th day of December, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Supplement No. 3 to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.78, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 35938

In the matter of the application of the Wholesale Lumber Dealers' Association, Incorporated, the Canadian Lumbermen's Association, the Canadian Manufacturers' Association, and the Board of Trade of the City of Toronto for disallowance of Rule 16/B of the Canadian National Railway Company's Tariff C.R.C.E-821 and Rule 16-B of Item 255 of the Canadian Pacific Railway Company's Tariff C.R.C. No. E-4126, effective January 1, 1925, respecting stop-off arrangements on lumber.

File No. 8641.39

TUESDAY, the 30th day of December, A.D. 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Canadian Freight Association,—

The Board orders: That the following tariff schedules, namely:—

Item No. 255, Correction No. 14, Canadian Pacific Railway Tariff C.R.C. No. E-4126; and

Canadian National Railway Tariff C.R.C. No. E-821, effective January 1, 1925, be, and they are hereby, suspended pending hearing by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.



Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 23

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Re Browns Limited and Canadian Pacific Railway Company.—Claim of Traffic Bureau of W. M. Scott, Winnipeg, Man., covering two shipments imported from Great Britain destined to Portage la Prairie, Man.

File No. 33798

The Traffic Bureau of W. M. Scott, Winnipeg, Man., submitted to the Board two original receipted expense bills, one covering "1 Bale woollens", the other "2 Bales rugs", imported from Great Britain to Browns Limited, Portage la Prairie, Man., and stated in a letter to the Board that—

"Canadian Freight Association Tariff No. 11-E carries the import rates that were in effect when these shipments moved. This tariff carries both class and commodity rates. When commodity rates are shown it removes the application of the class rate. We contend that as rugs are shown as taking 1st class rate in the Canadian Freight Classification that the 1st class rate as shown in the class rate table should apply and that the rate as assessed, namely dry goods N.O.S., is out of order."

The freight claims auditor of the Canadian Pacific Railway Company asked the applicant Bureau for a withdrawal of the claim for the reason that Canadian Freight Association Tariff No. 11-E, which was in effect at the time these shipments moved, did not carry any specific rate on woollens or rugs, but it did carry a commodity rate on dry goods N.O.S.; that page 4, rule 2, states that whenever a commodity rate is established it removes the application of the class rate on that commodity; that woollens and rugs are shown in Canadian Freight Classification under the heading of dry goods; and that the dry goods rate as charged is correct.

The applicant Bureau asked for a ruling on the statements set out above:—

INFORMAL RULING

The expense bill for shipment described as "1 Bale Woollens" covers a shipment that moved during the time that Canadian Freight Association tariff No. 11-D, C.R.C. No. 83 was in effect. The other expense bill, reading "2 Bales

Rugs" covers a shipment that moved during the life of Canadian Freight Association tariff 11-E, C.R.C. No. 92. So far as is relevant to the point here at issue the provisions in both tariffs are the same.

The tariffs in question do not contain specific commodity rates on woollens or rugs. The tariffs contained specific less than carload commodity rates on an item reading: "Dry goods, N.O.S., in bales C.R.C., or boxes." The rates prescribed under this item are stated to have been charged. The tariffs on their title pages read: "Governed (except as specified) by Canadian Freight Classification No. 16". Attention might also be directed to rule 15 in the tariffs in question, reading:—

"When used in items carrying specific carload or less than carload commodity rates only (the term N.O.S.) means "not otherwise specified in this tariff in any item carrying specific carload or less than carload commodity rates, between the same points, irrespective of package requirements."

In Canadian Freight Classification No. 16, under the distinctive heading "Dry goods" there is listed various articles of dry goods, including rugs and woollen goods, and as these two articles are not specifically provided for in the tariffs in question and said tariffs are governed by the Canadian Freight Classification, the ruling of the Board is that the item in the tariffs reading: "Dry goods, N.O.S., in bales, C.R.C., or boxes" applies on the articles named under the heading "Dry goods" in the Canadian Freight Classification, except where there are specific items in the tariff on named articles of dry goods.
OTTAWA, January 9, 1925.

ORDER No. 35987

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," in pursuance of General Order No. 119, for leave to close the station at New Sarum, Ontario, as an agency station.

File No. 4205.389

FRIDAY, the 12th day of December, A.D. 1924.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, the Township of Yarmouth offering no objection,—

The Board orders: That the applicant company be, and it is hereby, authorized to remove the station agent at New Sarum, in the province of Ontario, Cayuga Subdivision.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 35988

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," in pursuance of the provisions of General Order No. 119, for permission to close Darling Road, Cayuga Subdivision, in the Province of Ontario, as an agency station.

File No. 4205.388

FRIDAY, the 12th day of December, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application and what is alleged in support thereof, and upon the report and recommendation of its Chief Operating Officer, and reading what is filed on behalf of the Township of Canboro,—

The Board orders: That the applicant company be, and it is hereby, authorized to remove the station agent at Darling Road, Cayuga Subdivision, in the province of Ontario.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 35992

In the matter of the application of the Nova Scotia Shippers' Association and the Nova Scotia Fruit Growers' Association for suspension of proposed increased rates on apples from Dominion Atlantic Railway stations to Halifax for export; and Order No. 35529, dated September 8, 1924, suspending the said company's tariff pending hearing by the Board.

File No. 26560.4

SATURDAY, the 10th day of January, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

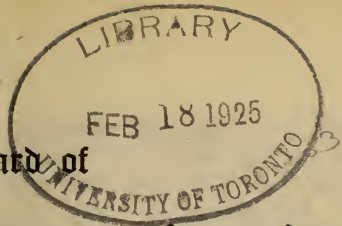
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon hearing the matter at the sittings of the Board held in Halifax, Nova Scotia, October 20, 1924, the Nova Scotia Shippers' Association, the Nova Scotia Fruit Growers' Association, the Department of Agriculture, and the railway company being represented at the hearing, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the Dominion Atlantic Railway Company's tariff. C.R.C. No. 746, effective September 8, 1924, providing for an increase in the rates on green apples to Halifax for export, be, and it is hereby, disallowed.

H. A. McKEOWN,
Chief Commissioner.

903.



The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of the Manitoba Government Liquor Control Commission, Winnipeg, Man., against carload commodity rate on Liquors, Wines and Spirits as published in C.F.A. Tariff No. 11-G being in excess of class rate.

Complaint of the Retail Merchants' Association of Canada, per W. L. McQuarrie, Saskatoon, Sask., against that part of Supplement 4 to Freight Association tariff No. 11-G, C.R.C. No. 127, which says that the class rates on page 7 of the tariff, or as amended, are cancelled, the complainants stating that this represents an increase in import rates.

Complaint of the Board of Trade of Winnipeg, Man.

Complaint of the Board of Trade of Edmonton, Alta.

Complaint of the Board of Trade of Calgary, Alta., per J. H. Hanna.

Complaint of the Province of Alberta, per A. Chard, Freight and Traffic Supervisor, Dept. Railway and Telephones, Edmonton, Alta.

Complaint of the Associated Boards of Trade of British Columbia, per E. V. Ablett, Vancouver, B.C.

Complaint of the Victoria Chamber of Commerce, B.C., against Supplement No. 4 to C.F.A. Tariff 10-E (C.R.C. No. 126), and the withdrawal of class rates from this tariff.

File 33172

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I

The matter involved was set down for hearing at Saskatoon, Edmonton, Calgary, Vancouver, Victoria and Winnipeg.

The initial complaint in this matter came from the Government Liquor Control Commission of Manitoba, hereinafter spoken of as the Liquor Commission. In this, protest was made against the cancellation of class rates. It was alleged that the cancellation of class rates under tariff C.R.C. No. 127 was intended simply as a means to try and defeat certain claims for overcharges which had been filed by the Liquor Commission. No further details were filed.

The Retail Merchants' Association of Canada, through its Saskatchewan Branch, filed through its provincial secretary a protest against the cancellation of class rates, alleging that such cancellation made an increase in import rates. No detail was given.

The Winnipeg Board of Trade filed a protest against the cancellation of class rates, stating that these class rates had been published for many years and were an absolute necessity for importers who used this service in comparing quotations with other markets; also as a basis in quoting on contracts in ascertaining definite laid down costs.

The Edmonton Board of Trade protested against the change until satisfactory reason for the elimination of the class rates had been filed.

The Calgary Board of Trade asked for suspension pending the filing of satisfactory explanation by the railways.

Mr. A. Chard, Freight and Traffic Supervisor of the Province of Alberta, filed a protest against the cancellation of the class rates. In this connection, he used the following language:—

"It is true that special commodity rates are named on some commodities, but there are many articles imported from Europe to Western Canada which are not so covered. On such articles, it is not possible to estimate costs in advance on account of the fluctuations of boat charges which necessarily follow as part of the through charges."

The Associated Boards of Trade of British Columbia filed a protest against the change in tariff C.R.C. No. 126 which made the same changes in respect of British Columbia as were covered in regard to the Prairie Provinces under tariff C.R.C. No. 127 already referred to. Protest was lodged against the change being made until such time "as a satisfactory reason is given for the elimination of the class rates from this tariff."

A similar protest was filed by the Victoria Chamber of Commerce.

At the hearings, it was found that with the exception of the Retail Merchants' Association and the Liquor Commission, the various bodies and individuals who had made representations withdrew their complaints. Their general position was that the explanations given by the railways were satisfactory, and that they were satisfied the railways were trying to take care of the traffic which offered by issuing commodity rates.

The traffic representative of the Winnipeg Board of Trade, Mr. Hamilton, stated that it was convenient to have the class rates in existence. He stated there were some articles imported which were not covered by commodity rates, and that these were stated by the Canadian Freight Association to amount to 5 per cent of the traffic, or perhaps less.

The following discussion shows that the situation is, in the minds of the trade representatives, adequately taken care of by the existing arrangements as to commodity rates:—

"The ASSISTANT CHIEF COMMISSIONER: Are you informed that any particular articles important in amount are affected by the removal of these class rates? We have been trying to get some information upon that question at different points, but have not been very successful. I would like to have something definite, if we could get it.

"Mr. HAMILTON: I have one or two representatives of the wholesale houses here, from whom I might perhaps get the information.

"The ASSISTANT CHIEF COMMISSIONER: All right, we will be glad to have it.

"Mr. HAMILTON: I will call first upon Mr. Maluish, Traffic Manager of the J. H. Ashdown Hardware Company of Winnipeg.

"Can you answer the chairman's question, Mr. Maluish?

"Mr. MALUSH: When the cancellation took place, we made application to the railways to have established less than carload commodity rates on the items which were affected, and up to the present time there is not any item which we import which is not taken care of.

"The ASSISTANT CHIEF COMMISSIONER: Taken care of satisfactorily by commodity rates?

"Mr. MALUSH: Yes.

"Mr. HAMILTON: I am not going to stress the point, I am merely raising it.

"The ASSISTANT CHIEF COMMISSIONER: On the basis of Mr. Maluish's evidence, I would not say that there was any necessity for it."

At Saskatoon, the Retail Merchants' Association was represented. It was contended that while a substitute in the form of a supplement quoting commodity rates on various articles had been published to take the place of what had formerly been covered by the class rates, the rates so filed involved increases.

It was pointed out to the applicant that under the practice hitherto operative and the tariff practice under the rule now operative, the maximum charge allowable is the ocean rate, plus the rail rate from point of entry.

II

The practice of quoting through import rates covering ocean and rail movements is one which has been of long standing. It was represented in evidence that the quotation of the through import rate was of importance to the merchant, because it enabled him to ascertain definite laid down costs. The quotation of such a rate averaging as it does the ocean factor enables the merchant to discount the fluctuations in boat charges.

Just how long tariffs of this nature have been in existence was not developed in evidence. The Chairman of the Canadian Freight Association stated that although he had tried to trace this arrangement back to its origin, he had not been able to find the original basis for the class rates.

The tariffs have provided both through class and commodity rates, but the through class rates have been applicable only where the movement is relatively slight and somewhat discontinuous. Where the movements have been relatively important in amount and continuous, they have been looked after by the commodity rates; and as pointed out in another connection, the railways in removing the class rates stand prepared to substitute commodity rates where there is any movement of appreciable amount.

The filing of a through class rate in regard to a movement involving in part a water haul not subject to the Board's jurisdiction, is, on the face of it, anomalous, because the provisions of the Railway Act in regard to the classification do not apply on an ocean movement; but, as pointed out, the through class rates were intended to be a general way of taking care of the less important movements not covered by commodity rates. From this, it would follow that the railways had in mind that where the movement became important in amount commodity rates would be applied.

The tariffs involved in the present application name through rates from European ports to stations in Western Canada. Prior to 1918, they were published by the Canadian railways individually. In that year, the individual tariff issues were cancelled, and since that time a single tariff has been published for and on behalf of the railways.

Rates published in the tariff in question are constructed on a combination of the ocean line proportion, plus the local domestic rates from Montreal, or

as applicable from the port of Baltimore through Chicago and St. Paul if lower; and the through rates so arrived at are also made applicable via Quebec and the ports of St. John, West St. John, Halifax and Portland.

The explanation given by the railways in regard to a movement on class rates and commodity rates is set out as follows:—

“1. (a) The class rates were originally established for the purpose of taking care of an occasional shipment which might not be covered by a through commodity rate.

“(b) In a great number of instances, owing to the light and bulky nature of the goods moving under the class rates, there is not sufficient to allow the ocean and rail carriers fair freight revenue on the through rate basis. In the great majority of cases, the goods are so light as to measure anywhere up to five and six times per ton measurement of 40 cubic feet to the ton weight of 2,240 pounds. Therefore, it will be observed from rule 2, Tariff 11-G, and corresponding rule in Tariff 10-E, the following provision was made:—

“‘Whenever a commodity rate is established, it removes the application of the class rate on that commodity.’

“(c) The carriers from time to time cover any traffic that is moving in volume by specific commodity rates.

“2. The basis for the class rates was arrived at by taking an arbitrary rate in cents per 100 pounds, approximating the ocean rate, but this had no definite relation to the actual ocean rate for the reason that the ocean carriers invariably endeavour to make their rates on a weight or measurement basis whichever yields the steamship the greater revenue, e.g., an ocean steamer has a limited capacity of so many cubic feet of cargo and it is essential that they should endeavour to get an average freight rate for every cubic foot of space.

“Ocean rates from British and foreign ports vary on the different commodities shown under one class in the Railway Classification, and even vary on the same commodity from different ports by reason of competitive conditions. There is no classification such as is commonly used to govern railway rates.

“It might also be mentioned that ocean freight rates are quoted in sterling, franc or other foreign currency, and are quoted so much per measurement ton of 40 cubic feet, or according to continental usage per cubic meter of 35.3 cubic feet, or alternatively per gross ton weight of 2,240 pounds, or per 1,000 kilograms of 2,204.6 pounds.

“3. It is extremely difficult to give the Board the actual percentage of import traffic moving under class rates, but the best judgment of the officials handling import traffic is that it would not exceed five per cent and is probably very much less.

“*General.*—For the information of the Board, it is pointed out that there are no through tariffs from European ports to interior points on the American continent other than those in effect via Canadian ports (in this connection Portland being considered a Canadian port). All import traffic moving via United States Atlantic ports is handled on the basis of the actual ocean rate plus the actual inland rate.

“Occasionally, owing to the method of packing or the variation in relative weight and measurement of the same commodity, the actual ocean rate plus the actual rail rate works out a lower through combination than the through commodity rate. In such instances, the shipper or consignee is given the benefit of such actual ocean and rail rates as against the through commodity rates.

"In further explanation of this point, it is submitted that it is almost impossible to arrive at the actual ocean weight and measurement of goods under a particular commodity heading for the reason that some shippers' goods weigh heavier than others. Furthermore, some shippers protect their goods in packing to a greater extent than others, which results in a greater measurement to the ton weight.

"We have received nothing from the complainants direct or through the Board indicating what effect the cancellation of the class rates in Tariff 11-G will have on their business, and we trust the Board, on due consideration of the conditions as set forth herein, will agree that we are justified in cancelling the class rates referred to and will so advise the complainants."

Tariff C.R.C. No. 127 published through freight rates from European ports to Armstrong, Fort William, Port Arthur and Westfort and stations west thereof in Canada, except to points in British Columbia which were covered by Tariff C.R.C. No. 126.

Both of these tariffs named class and commodity rates. In various cases, the commodity rates were on a higher basis than the class rates. The commodity rates were constructed on a combination of ocean line proportion and inland rate, as already referred to herein, and the basis for the class rates is as set out in Part 2 of railway's explanation above quoted.

In the supplements to which exception was taken, the class rates have been cancelled, leaving in effect only the commodity rates; and the supplements bear the notation:—

"On commodities other than those specifically mentioned in the tariff, the actual ocean rates to the seaboard, plus the inland rate from port of importation will apply."

The tariff concerned quotes through rates made up of a combination of a proportion of the ocean rate and the inland rate. In the case of ocean transportation, the rates vary on different commodities which are shown in one class in the Railway Freight Classification, and even vary on the same commodity from different European ports by reason of competitive conditions. As already pointed out, there is no classification governing ocean rates as there is in the case of rail rates.

Further factors affect ocean rates which do not enter into the case of rail rates. In rail rates, the charge per 100 pounds is the unit; in the case of ocean carriage, rates may be based on bulk or on weight, the charge in general being based on the unit which gives the highest return.

The ocean factor entering into the through rate is described as the ocean line proportion. This is not the actual ocean rate; but, according to the submissions made, it represents a reduction of approximately 20 per cent. It has appeared to be necessary to strike an average ocean proportion in order to enable the publication of a through rate; and, as a result, it occasionally happens that on account of the method of packing or variation in relative weight and measurement of the same commodity under different conditions, the actual ocean rate, plus the actual rail rate from point of discharge to destination produces a lower through combination than the through commodity rate.

The railway companies have stated that in such instances it has always been the practice to give consignors and consignees the benefit, as a maximum, of such actual ocean and rail rates, if lower than the published through rate.

The matter is now specifically provided for in Supplement 6 to Tariff C.R.C. No. 127, in Rule 17, which reads:—

"When the actual ocean rate plus the inland rate from port of discharge to destination makes lower than the through rates published in tariff and effective supplements thereto, such combination will apply."

That is to say, there is formally set out in rule what had been the practice before.

III

Counsel for the Liquor Commission referred especially to Tariff C.R.C. No. 127, effective June 18, 1923, and supplements to same. It will be noted in passing that an error in description crept into the argument. It was stated that liquors were for the first time provided with a through commodity rate in the tariff in question. The tariffs show, however, that for at least the last ten years, with the exception of the period between early in 1918 and June, 1920, through commodity rates on liquors have been published.

Counsel cited Supplement 4 to the tariff effective January 18, 1924, and stated that the class rate was cancelled and removed by the following provision:—

"(a) Class rates named on page seven of the tariff, as amended, are hereby cancelled. On commodities other than those specifically mentioned in the tariff, the actual ocean rates to the seaboard, plus the inland rates from port of importation, will apply."

Exception was taken to the legal status of this tariff. It was pointed out that it was a tariff of rates on commodities from specified European ports. Counsel further stated that the tariff further purports on the cover to be a general one—an ocean and rail tariff; and the contention that it has no legal status turns on the position that as it is not concurred in by any ocean carrier it would not be a joint tariff under the Act; and it is set out that if it is not a joint tariff, then the railway companies have no tariff and, therefore, there is no legal tariff under the Railway Act under which the charges in question could be collected.

Counsel referred to section 339 of the Railway Act which reads as follows:—

"As respects all traffic which is carried from any point in a foreign country into Canada, or from a foreign country through Canada into a foreign country by any continuous route owned or operated by any two or more companies, whether Canadian or foreign, a joint tariff for such continuous route shall be fully filed with the Board."

and urged that this section, as well as earlier sections of the Act provided that tariffs must be concurred in by all the parties interested.

An initial exception to the position turns upon the wording "by any continuous route owned or operated by any two or more companies whether Canadian or foreign." Under the Interpretation Section of the Railway Act, "company," where not otherwise stated or implied, means railway company, unless immediately preceded by "any," "every," or "all," in which case it means every kind of company which the context will permit of. It seems to me that the words "route is owned or operated," are significant as bearing upon the kind of company. Subject to a situation which might possibly arise where a vessel is owned, chartered, used, maintained or worked by a railway company subject to the Board's jurisdiction (see section 336), the companies with which the provisions of the section are concerned are railway companies.

The route which is spoken of as being "owned or operated," would not, it seems to me, be satisfied by a movement over the discontinuous pathway of the ocean. A route which is not owned by any company and is not operated in the

sense of having any continuity of operation, such as it seems to me the section predicates, would not, of necessity, fall within the obligation of section 339 in respect of the filing of a joint tariff. So far as the provisions of the section are concerned, the ocean carrier is not, in my opinion, covered by the section. A joint tariff may be filed covering ocean and rail movement; but the Board's jurisdiction to compel such filing does not go beyond the rail portion of the journey. In other words, it might declare and find what was a reasonable proportion to be charged from the point where the rail journey began, on a line subject to the Board's jurisdiction. But the Board could not compel the ocean carrier to file a joint rate made up of the ocean rate, in whole or in part, and the proportion found reasonable for the rail journey.

Counsel stated that section 339 provided that tariffs must be concurred in by all the parties interested, and he says the earlier sections had the same provision.

The provisions of this section were referred to in *British American Oil Co. vs. C.P.R. 12 Can. Ry. Cas.*, 327. The section at that time was 336. The late Chief Commissioner Mabey pointed out that while Parliament had said that a joint tariff should be filed, it had no means of compelling the foreign carrier to comply with this direction. Further, it had also been pointed out in *British American Oil Co. vs. G.T.R.*, 9 *Can. Ry. Cas.*, 178, at p. 188, that the Railway Act did not require a concurrence between a foreign railway company and a Canadian railway company. It was pointed out that such a concurrence was not required except as to domestic traffic falling within section 333.

It may be that there is no reference to concurrence because of the jurisdictional difficulty of dealing with two railway lines, one of which is outside the Board's jurisdiction; but whatever be the reason, concurrence is not required by the statute as between two railway companies, and is not a condition precedent to the filing of a joint tariff under section 339 in regard to two railways, one of which is not subject to the Board's jurisdiction. What applies to the railway applies with even greater force to a situation where part of the movement is handled by an ocean carrier.

The argument as to the illegality of the rate fails.

IV

The existing rate basis was attacked from another standpoint as being illegal. Tariff C.R.C. No. 127 and Supplements of same contains the provision, that "whenever a commodity rate is established it removes the application of the class rate on that commodity." Supplement 4 to the tariff effective January 18, 1924 (C.R.C. No. 127), at page 7, cancels the class rates. The provision reads:

"(a) Class rates named on page seven of tariff, as amended, are hereby cancelled. On commodities other than those specifically mentioned in the tariff, the actual ocean rates to the seaboard plus the inland rates from port of importation will apply."

It is contended that this is a substitution of a commodity for a class rate, the commodity rate being higher, and that the increasing of the rate on the article beyond what is provided for in the classification is not legal without the sanction of the Board and publication in *The Canada Gazette*.

As already pointed out, the practice, as admitted by the railways, has been that the combination of the ocean rate and the inland rail rate operates as a maximum. It has been emphasized that the ocean portion of the journey is not subject to the Board's jurisdiction. The Railway Act makes no provision for the approval of the portion of the rate concerned with the ocean movement, nor is there any provision for the approval of the rating under classification in respect of such movement; consequently it is open to raise the portion charge-

able to the ocean journey beyond what has hitherto existed under the class rate; this, however, being subject, on the admission of the railways, to the actual ocean rate as a maximum.

In respect of the question of variation of classification on the inland rail haul, the situation is different. If an article is moving on a class rate, then the removal of the article from the lower to a higher class rate requires the sanction of the Board and publication in the *Canada Gazette*; but as the railways have admitted the practice which is now incorporated in a specific rule, namely, that the total rate is not to exceed the ocean rate and the inland rail rate, it follows that the inland rail rate is controlled by the existing classification as a maximum.

Reference was made to the rule in the tariff reading:—

“Whenever a commodity rate is established, it removes the application of the class rate on that commodity.”

Counsel submitted “that a commodity rate is a special rate which must be lower than the class rate and cannot be higher” (p. 5100). In Supplement No. 4 to the tariff, effective January 18, 1924, the class rates were cancelled, and in Supplement No. 6 the rule above quoted was eliminated from the tariff because upon the cancellation of the class rates it no longer had any application. The tariff as it now stands, therefore, contains commodity rates only. With regard to tariffs generally, counsel is correct in stating that commodity rates are special rates lower than the class rate. However, this tariff is on an entirely different footing from the classes of tariffs with respect to which the foregoing statement applies, because unlike the other classes of tariffs it names through rates made up of a combination of the ocean lines’ proportion and the inland rail rate. In connection with the ocean proportion, the rates vary on different commodities which are shown in one class in the railway freight classification, and even vary on the same commodity from different European ports by reason of competitive conditions. There is no classification governing ocean rates such as is commonly used to govern railway rates. The railway companies stated that the class rates which were arrived at by taking an arbitrary rate in cents per 100 pounds as representing the ocean proportion, but which had no definite relation to the actual ocean rate, were originally established for the purpose of taking care of an occasional shipment which might not be covered by a through commodity rate. They stated it was difficult to give the actual percentage of import traffic moving under the class rates, but their best judgment was that it would not exceed 5 per cent and was probably very much less. They further stated that they were prepared to establish specific commodity rates to cover any traffic that is moving in volume and not already provided for. In Supplement No. 5 to the tariff, issued since the cancellation of the class rate, numerous additional commodities are provided with through commodity rates.

Inasmuch as the maximum charge under the tariff, as per rule specifically published therein, is the actual ocean rate plus the local class rate from port of discharge to destination, then what might, as a result of the wording of the rule re class vs. commodity rates (now cancelled), have the appearance of a commodity rate in excess of the class rate, in reality is not; consequently, the argument of complainant on this point fails.

At pp. 5103 to 5105, the point made by counsel is, as I understand it, that the railway companies had in some cases charged for the rail proportion of the haul an amount in excess of the local rate from port of discharge to destination. One example, being a shipment to Portage la Prairie, was cited. What is above stated as to the method of constructing the through rate based on the *average* ocean rate furnishes the explanation of this case. Occasionally the rail proportion exceeds the local rate, but more frequently, it is stated, is less.

The matter is one of divisions of a through rate between the carriers. Even with respect to continuous rail movements within Canada, or on international traffic, under the method followed in dividing the rate between the carriers, one of them may receive as its division of the through rate, with respect to traffic to and from certain points, an amount actually in excess of its local rate between the same points. These are matters as between the carriers. So far as the consignee is concerned, his interest is with respect to the reasonableness of the through rate, not the division thereof as between carriers in interest, and where, as here, the maximum *through* rate is the actual ocean rate plus the inland rail rate, then reference to the rail proportion, without taking into account the ocean proportion, which on the shipment in question would be less than the actual ocean rate, is not really relevant.

V

Counsel for the Liquor Commission urged that the existing through rate arrangement should be abandoned and that there should be substituted therefor a rail import tariff from Halifax, St. John, Portland, Me., and Montreal; the rate to be the local domestic rate from Montreal. The situation here, however, is a competitive one, i.e., import traffic to Chicago moves through the United States Atlantic seaports of New York, Philadelphia, and Baltimore, and if the Canadian lines want to participate in this traffic they must meet the rates published from those ports and this is in fact what they do on the movement through the Canadian ports.

While the rail component of the total charge is in accordance with what the Liquor Commission is asking for, the application goes beyond this and asks that instead of quoting through import rates from a foreign port the import rate should be from a Canadian port where the rail journey begins.

In the case of ocean rates, conditions in connection with weight, bulk, packing, etc., affect the rate. One type of liquor may have a different method of packing from another, and may take up more or less space. All of these factors are important as making a basis on which the ocean rate is charged. In general, the object of the ocean carrier would be to take the basis, be it weight or space, which gives the highest charge.

The existing through rate arrangement is built on the basis of averaging. The different factors referred to are averaged and, in general, the ocean proportion is 80 per cent of the actual ocean rate. If there are exceptional conditions peculiar to the handling of the article concerned which bring up the charge, still the actual ocean rate is the maximum.

The breaking up of the through import rate which applicant asks for would, under existing conditions, mean that a charge would be obtained made up of domestic inland rail rate from Montreal, plus the actual ocean charge. This would result in an increase in rates in the majority of cases. It further appears that this would mean a dislocation of the existing system of through rates, and, as has been pointed out, the existing system is generally satisfactory in the West. Nothing in the way of evidence has been brought forward to justify giving liquors a rate treatment different from that accorded other forms of merchandise, nor has it been shown that there is any undue burden of rate on liquors, or that they are not in a position to readily carry the existing rate charges.

Reference was made to the rate conditions existing in connection with import traffic in the United States. As has been pointed out, through import rates, made up of ocean and rail rates, do not exist through United States points. The situation is that the ocean rate is quoted to the port of entry and the rail rate beyond.

Rates and rate practices in the United States afford no necessary criteria of what the rate should be in Canada, unless the conditions attaching thereto are on all fours with the conditions existing in Canada.

Canadian Oil Cos. v. G.T., C.P., and C.N. Cos., 12 Can. Ry. Cas., 355.

Manitoba Dairymen's Assn. v. Dominion and Canadian Northern Express Cos., 14 Can. Ry. Cas., 142.

Reference was made to there being a common rail import rate via Vancouver, Portland, Oregon, and Seattle. This was adduced, presumably, as an argument in favour of the practice which the Liquor Commission desires to have made applicable in Eastern Canada. There is no such allegation of similarity of conditions as between the movement eastward from the Pacific coast and the movement westward from the Atlantic coast as would make the practice in the former case the necessary criterion of what is reasonable and proper in the latter case.

There being no allegation of unjust discrimination or detriment arising therefrom, the alleged difference in practice gives no basis on which action can be taken under The Railway Act.

It may be noted in passing that Vancouver, Seattle, and Portland are all water termini. Vancouver is 149 miles from Seattle; Seattle is 175 miles from Portland; and with the low costs of water haulage, it can readily be understood how a process of equalization as between these ports has been worked out, the slight difference in water mileage between the ports in question not seriously affecting the cost of water haulage.

But this phase of the argument leaves out of consideration the fact that in the through import rate from eastern Canada the process of equalization and absorption is carried still further. From Halifax to Montreal, the mileage is 798 miles, while from St. John to Montreal there is a rail haul of 488 miles. In the case, then, of a through import rate movement via Halifax or St. John, there is apparent a very substantial rail haul absorption in the rate; and it appears that through import movements to the West thereby obtain a rate basis lower than would be applicable if mileage were adopted as the strict criterion.

A reference was also made at the end of the hearing in a somewhat casual way to the fact that Chicago has the same rate the year round from St. John and Halifax as from Quebec and Montreal. The situation here, however, is a competitive one. The import traffic moves from the North Atlantic seaports of the United States to Chicago, for example, from New York to Chicago. If the Canadian lines are to participate in this traffic, they must meet the New York rate; and this is, in fact what they do on the movement through the Canadian ports.

As has been pointed out more than once, the rail rate charged from the American seaboard is the actual inland rail rate; and in order to compete with the movement which otherwise would go via United States ports, the Canadian carriers have to apply the same method of rail absorption as they apply in connection with through import business moving to western points.

As has been emphasized throughout, the Liquor Commission is only one party to the application. Other interests are concerned in regard to the movement of goods on through import rates; and, with the exception of the protest filed by the Retail Merchants' Association at Saskatoon, there is substantial unanimity in favour of the arrangement as now covered by tariff.

As already pointed out, no good reason has been established in evidence as to why liquors should be given a different treatment as to rate basis from other commodities.

I am of the opinion that the application should be dismissed.

December 31, 1924.

Commissioners Boyce and Oliver concurred.

ORDER No. 36037

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway, Prince Albert Northeast Branch, from mileage 0 to 23.94.

File No. 30349.7

THURSDAY, the 22nd day of January, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of the Prince Albert Northeast Branch, mileage 0 to 23.94; provided the speed of trains over the said line shall not exceed a rate of fifteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36059

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its St. Rose Subdivision between mileage 15 and 37.48.

File No. 29537.10

FRIDAY, the 23rd day of January, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway running from mileage 15, near Ste. Rose du Lac, thence in a north and north-easterly direction, to mileage 37.48, a distance of 22.48 miles; provided the speed of trains operated over the said line shall not exceed a rate of fifteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36054

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of the proposed location of its third-class station building at Hay Lake, Alberta, as shown on the plan dated June 26, 1924, on file with the Board under file No. 28780.34.

MONDAY, the 2nd day of February, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Operating Officer, and the consent of the municipality, filed,—

The Board orders: That the location of the applicant company's third-class station building at Hay Lake, in the province of Alberta, as shown on the said plan on file with the Board under file No. 28780.34, be, and it is hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36068

In the matter of the application of the Canada Central Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway from mileage 72.04 to 85.04.

File No. 31574.3

WEDNESDAY, the 4th day of February, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway from mileage 72.04 to 85.04; provided the trains operated over the said line shall not exceed a rate of speed of eighteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XIV

Ottawa, March 1, 1925

No. 25

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ORDER No. 36108

In the matter of the complaints of the Western Canada Flour Mills Company, Limited, of Calgary, Alberta, and the Calgary Board of Trade against the proposed cancellation of the present arrangement of absorbing terminal charges at Vancouver on traffic destined to the Orient, such terminal charges to be added to the rail and ocean rate, except on shipments from Manitoba points.

File No. 33564.1

THURSDAY, the 19th day of February, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is alleged in support of the complaints, and the report of its Chief Traffic Officer,—

The Board orders: That the Canadian Pacific Railway Company's proposed amendment, subsection "D," Supplement 10 to its tariff C.R.C. No. W-2755; and the Canadian National Railway Company's proposed amendment—Item 10-A, Supplement No. 2 to its tariff C.R.C. No. W-401—covering absorption wharfage and other charges at Vancouver and Victoria, in so far as such amendments constitute an advance, be, and they are hereby, suspended pending a hearing by the Board.

H. A. McKEOWN,

Chief Commissioner.

THE UNIVERSITY OF CHICAGO



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Railway Commissioners for Canada

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Complaint of James Buckley Estate, Prescott, Ont., against the increase in Canadian Pacific Railway switching charge, car-ferry to sidings in Prescott.

File No. 17860

REPORT OF CHIEF TRAFFIC OFFICER

THIS REPORT IS ISSUING AS THE

JUDGMENT

OF THE BOARD IN THIS MATTER

The question here at issue relates to the switching charge of the Canadian Pacific Railway for the movement of cars containing coal from the car-ferry slip to public team tracks within its yards at Prescott. There is shown below the switching rate contained in tariff first filed with the Board and subsequent changes.

First tariff filed 1904 to March 19, 1905.....	15 cents per gross ton.
March 20, 1905 to October 3, 1909	15 cents per net ton.
October 4, 1909, to December 26, 1911.....	20 cents per net ton.
December 27, 1911 to October 31, 1919.....	15 cents per net ton (Order No. 15472, November 23, 1911).
November 1, 1919, to September 14, 1923....	20 cents per net ton.
September 15, 1923, to December 25, 1923....	4½ cents per 100 pounds.
December 26, 1923, to date.....	20 cents per net ton to private sidings; 40 cents per net ton to team tracks.

The rates in effect from 1904 to December 26, 1911, were voluntarily established by the railway company. Upon complaint, and after a hearing concerning the increase in the rate from 15 to 20 cents in 1909, the Board, by its Order No. 15472, dated November 23, 1911, ordered the railway company to reinstate the rate of 15 cents per net ton, which was made effective December 27, 1911.

In 1919 the various railway companies subject to the Board's jurisdiction filed tariffs providing for general increases in local switching charges. These tariffs were not issued under any instruction from the Board nor as the result of any ruling or order of the Board, and it was the understanding that it was

open to any person or firm affected thereby to make formal complaint to the Board with respect to any rates contained therein. The switching rate at Prescott was at this time again increased from 15 to 20 cents per net ton, and there is no record of any complaint having been made to the Board with respect thereto.

With regard to the increase from 20 cents per net ton to $4\frac{1}{2}$ cents per 100 pounds during the period September 15 to December 25, 1923, and the publication of rates of 20 cents per net ton to private sidings and 40 cents per net ton to team tracks, effective December 26, 1923, the railway company's explanation is as follows:—

“When tariff E-3404 was superseded by tariff E-3946, effective September 15, 1923, it was intended to provide a rate of 1 cent per 100 pounds for private siding delivery, and 2 cents per 100 pounds for team track delivery, but, through some misunderstanding, the item was not inserted in the new tariff, with the result that, for a certain period, there was really no tariff rate applicable excepting the local switching rate of $4\frac{1}{2}$ cents, which applies in the absence of other specific rate. By supplement 6 to tariff E-3946, effective on December 26, 1923, the following item was inserted:—

“All freight, carloads, minimum 50,000 pounds, between car-ferry and Canadian National Railways:—

Interchange.	1 cent.
Private sidings.	1 cent.
Public team tracks.	2 cents.

“These are the same as the regular interswitching rates authorized by General Order No. 230, which makes the same distinction between private siding and team track delivery.”

It will be observed that it is only from December 26, 1923, that the company has differentiated in this switching rate as between private sidings and public team tracks at Prescott; at no time prior to that date was any such distinction made. It is stated this is the same distinction as is authorized between private sidings and public delivery tracks under the General Inter-switching Order of the Board. I would point out, however, that the switching service here in question is not an interswitching service; further, in this connection the entire switching toll is payable by the consignee in contrast to the partial absorption by line-haul carrier under interswitching. The railway company itself has taken the position that this service at Prescott is a local switching movement, but here again there is some distinction between this service and ordinary local switching. Local switching includes the supplying and spotting of the empty car, which is not required in this case.

At the sittings of the Board in Ottawa on September 16 last, the complainants not being represented, the railway company were asked if there was a greater expense involved in switching to the team tracks than to private sidings, and it appeared from their answers that the charge had not been predicated upon that basis but upon the ground that such a distinction was made under interswitching. It further appeared that there had not been any recent switching movements to private sidings, the coal traffic all moving, apparently, to public team tracks.

The railway company stated the increase from 20 to 40 cents per net ton was made in 1923 to line up with local switching rates at other points; for instance, at Montreal wharf. As to this I would submit that, obviously, the cost of switching varies greatly at different points and is naturally greater in the larger and more congested terminals; in fact, every service has its own

characteristics, and it is only necessary to review the varied services and different rates therefor, as contained in the company's switching tariff, to appreciate this and the different provisions made by the company therefor. The point here, therefore, is that a switching charge imposed at one point is not the criterion by which to measure the charge at another point where the service is, or may be, performed under entirely different conditions.

The railway company also stated, in reply to inquiry of the Assistant Chief Commissioner, that in making this increase in rate it had not been based on any detailed cost of operation. The company stated it would take out data and file details as to the cost, as well as revenue derived from these switching operations at Prescott.

This coal is received in foreign cars ex the New York Central Railroad at Ogdensburg, consequently the Canadian Pacific Railway has to pay per diem charges under the rules of the American Railway Association for the detention of the cars on tracks at Prescott. It was stated that a calculation covering the first six months of 1924 showed an average per diem expense payable by the Canadian Pacific Railway of \$1.33 per car. The cost of a switching movement in wages and fuel is given as \$9.88, in addition to which the company submits there should be considered something additional to cover the roundhouse expense, cost of supplies and compensation for the use of trackage and locomotive.

During the six months ending June 30, 1924, 34 cars were switched for the Buckley Estate, at an average weight of 81,201 pounds, the revenue on which at 40 cents per ton was \$16.24 per car. The cost given for the switching movement would apply for handling one car. No doubt two or more cars are sometimes, if not frequently, handled in one switching movement at approximately the same cost, except for an additional \$1.33 per car per diem expense, but at an increase of \$16.24 per car in the revenue derived. A switching rate of 30 cents per net ton would give a revenue of \$12.18 per car, which would not be a very great margin over the cost figures submitted when but one car is moved, although it would give a large margin over the cost to the railway company where two or more cars are handled in one switching movement.

Having considered all the circumstances, it is my opinion that the railway company has not justified an increase of 100 per cent in this switching charge, and that it should be directed to establish a switching charge of 30 cents per net ton in lieu thereof.

W. E. CAMPBELL,

Chief Traffic Officer.

OTTAWA, January 5, 1925.

Application of the Canadian Manufacturers' Association, Toronto, Ont., for a ruling of the Board in connection with some ten demurrage accounts outstanding on cars delivered to Dymont Baker Lumber Company at London, Ont., where the issue involved resolves itself into one of interpretation of Rule 3 (a) of the Demurrage Rules providing for an allowance of 24 hours after notice of arrival has been sent or given in the case of a consignor not served by a private siding or industrial interchange track, to give orders for special placement.

File No. 1700.264

INFORMAL RULING

The informal ruling of the Board in this matter was communicated to the applicant association, and the Canadian Car Demurrage Bureau, by the Secretary of the Board by letter, dated March 2, 1925, as follows:—

"Referring to your various letters to the Board dealing with the matter of demurrage in respect of cars handled for account of the Dymont Baker Lumber Company at London, Ont., I am directed to say that the situation, as developed from your submissions as well as those of the Canadian Car Demurrage Bureau, is that the Dymont Baker Lumber Company have not a private siding and take delivery from public team track. In your letter of October 24 you referred to the percentage of cars that were placed only after receipt of orders from consignee and alleged that this bore out the contention of consignees that the general practice was to place cars only after receipt of their placing order. Of the 71 cars covered by the statement, it is noted that 38 were consigned 'to order,' and these should not be considered since it would be necessary to await surrender of bill of lading on such cars, at which time placement orders would be given. The cars consigned to the Dymont Baker Lumber Company direct were 33, and only 9 were placed after date of consignees' placing order. It is not conclusively shown, therefore, that the general practice is to place cars only on receipt of order; on the other hand, it would appear that the general practice of the railway company with respect to cars consigned to this firm is to place them on the public delivery track most convenient to their place of business as soon as possible after arrival of the cars, and without the necessity of any special order for such placement from the consignees.

"The contention made in your letter of February 18 is noted, viz., that the railway company should have notified consignees when the cars were placed on the public delivery track in question; further, that in your opinion the special placing order of consignees should have been treated as tantamount to an application for information as to whether the cars had been placed. I am directed to state that demurrage rule 2 (a) outlines the obligation upon the railway company so far as notice is concerned. It is assumed consignees received notice as provided for by the rule in question, and I am directed to state that a further notice after the placing of the car is not called for by the demurrage rules. So far as relates to the construction you consider should be placed upon the consignees' placing orders, I am directed to say that these do not, from the information before the Board, appear to be requests for information as to where the car has been placed, and the provision of the demurrage rules in this connection is clearly set out in the second paragraph of demurrage rule 2 (a), which reads:—

" 'That carrier shall notify the consignee or his carter on application where his car has been placed for unloading. Any time lost to the consignee by default of the carrier in giving such information shall be added to the free time allowance.'

"It has also been represented to the Board that the Dymont Baker Lumber Company's place of business is located practically directly across the road from the delivery siding in question; that consignees' men are unloading from these tracks almost continuously; and there would, therefore, be no difficulty in the way of consignees being fully apprised of the cars placed for unloading and of which they had received notice as provided by demurrage rule 2 (a).

"On the general question of principle that is here involved, I am directed by the Board to advise you that with respect to cars for consignees without private siding, when consignee has been notified and car duly placed by the railway company upon public delivery track, and this being the delivery desired and the car unloaded there, the demurrage rules do not provide an additional 24 hours on the ground that this is required to give order for special placement where the car has already been placed and such order is of no purpose. If 24 hours' additional time were allowed under such conditions, the situation that would logically follow would be, taking a small station where there is

nothing but a public delivery track as an illustration, that cars would be placed thereon immediately upon arrival; that this would be the placing desired by consignee and the point from which he unloads; nevertheless, consignee could, the day following notification, give an order for special placing of the car and then have the following two days free time for unloading. This would, in effect, simply be an extension of the two days' free time for unloading as provided by the demurrage rules, to three days. In other words, the clear intent, as well as the wording, of the demurrage rules would be evaded, and a public delivery track consignee would have three days for unloading as against two days for a private siding consignee.

"I am also directed to refer you in this connection to matter of application of Canadian Car Demurrage Bureau, Western Lines, Winnipeg, for interpretation by the Board of Canadian Car Demurrage Rules Nos. 2, 3 and 4, to be found in Board's Printed Judgments and Orders, Vol. XIII, p. 103. The facts in the case are different in one respect, but from the standpoint of principle that case is practically parallel with what is here involved.

"Yours truly,

"A. D. CARTWRIGHT,

"Secretary, B.R.C."

March 3, 1925.

Application of the Department of Public Highways, Ontario, re alleged rate of 90 cents per net ton on stone shipped from Hagersville to Fletcher and Tilbury, Ontario, on the Michigan Central Railroad, and for an Order that the said railway company apply that rate to the movement mentioned.

File No. 25843.7

The application, as set out in a letter, dated December 1, 1924, from Mr. George Hogarth, Chief Engineer of the Department of Public Highways, Ontario, is as follows:—

"During January, 1924, the department was considering constructing a macadam roadway about 9.4 miles in length east of Tilbury, on the M.C.R. on the line between the counties of Kent and Essex, and we expected to have a special railway siding installed from the M.C.R. in order to accommodate part of this business and the other part of the stone would be received through Fletcher Station yard on the M.C.R. The total quantity of business that we expected to handle was 37,600 tons, and in view of this large volume we communicated with Mr. S. W. Carder, Assistant General Freight Agent, M.C.R., Buffalo, on January 31, 1924, advising them that in view of the volume of business offered we wished to obtain a lower rate than 95 cents.

"Under date of February 4, 1924, file 584-653-Q. Mr. Carder requested us to advise him by return mail if in the event he was successful in arranging a rate of 90 cents per net ton for this proposed movement it would be satisfactory to us. On February 7, 1924, we issued to Mr. Carder Order No. 19437, that 90 cents would be satisfactory to us.

"We had been preparing plans for our siding and we wished to get ahead with the work as soon as a freight rate could be agreed upon and upon receiving Mr. Carder's letter mentioning 90 cents as the rate we ordered the M.C.R. to go ahead with our siding and we immediately proceeded to make other arrangements to secure the large quantity of stone above noted.

"Under date February 18, 1924, Mr. Carder advised us that the rate to the points mentioned was 95 cents and it should be \$1.10. You will note from Mr. Carder's letter of February 4 that the M.C.R. seemed to favour a 90-cent rate for the volume of business offered. In the fourteen days between February 4 and February 18 for some reason they refused to consider a 90-cent rate.

"The stone is moved, our road is built and we gave the M.C.R. 37,971 tons of business to Fletcher and our Tilbury siding. On account of Mr. Carder's letter of February 4 we considered the rate was 90 cents per ton but the M.C.R. has billed us at 95 cents per ton. We have not paid anything yet on this account.

"We would request your Board for a decision in the matter of the above rates as we request a rate of 90 cents per ton on this business and would refer you to Canadian Pacific Railway Tariff E 4008, C.R.C.E. 4098, wherein a rate of 90 cents per ton is quoted on stone from Owen Sound to Toronto, a distance of 121 miles. The distance from Hagersville to Fletcher is 126.9 miles and the distance from Hagersville to Tilbury siding is 133.8 miles, so that the distances to which our stone was moved are comparable with the present established freight rate on crushed stone on the Canadian Pacific Railway from Owen Sound to Toronto and in view of this established rate from Owen Sound to Toronto a rate of 95 cents on the volume of business over the distances given is an injustice.

"There are practically no claims to any of the crushed stone business given the railroads and in view of this fact and the above-noted mileages and existing commodity rates and further on account of the misunderstanding over the rate we would request your Board to have the 90-cent rate mentioned in Mr. Carder's letter of February 4, 1924, apply to the movement above noted."

A copy of the application was sent to the solicitors of the Michigan Central Railroad Company, who, under date of January 9, 1925, filed the following answer:—

"On investigation of the rates on crushed stone from Hagersville to Fletcher and Tilbury on the Michigan Central Railroad Company, we beg to advise as follows: The rate which the Michigan Central are now applying on shipments of crushed stone is a rate of 95 cents per net ton as published to Essex, Ontario, in item 295 of the Michigan Central Railroad tariff, GFD 9353-H, C.R.C. 3074, which rate is applicable to Fletcher and Tilbury under the rates from intermediate stations (see page 18 of the tariff referred to). At the present time the M.C.R. publish a rate of 85 cents per net ton to Dutton, Ontario, a distance of 78.7 miles. The distance to Fletcher is 126.9 miles, and to Tilbury 133.8 miles, and it is the opinion of the company's traffic officials that they are justified in asking for the charges on the basis of a rate of 95 cents to Fletcher and Tilbury, which represents a difference of 10 cents for the rate in effect to Dutton, the additional haul being 48.2 miles in the case of Fletcher, and 55.1 miles in the case of Tilbury.

"For the Board's information we are also enclosing copy of the correspondence which has passed between Mr. Hogarth and the company in connection with the application for reduced rates. You will note from this correspondence that the M.C.R. Company did not agree to establish a rate of 90 cents."

The informal ruling of the Board as communicated to Mr. Hogarth by letter, dated January 14, 1925, is set out hereunder:—

INFORMAL RULING

"Referring to your letter of the 1st ult., I am directed by the Board to state that the matter was taken up with the Michigan Central Railroad Company and I enclose, for your information, copy of the letter of the company's solicitors, Messrs. Saunders, Kingsmill & Company, dated the 9th inst.

"I am further directed to say that enclosed therewith as part of the correspondence is a letter from you dated October 22 last, addressed to Mr. S. W. Carder, Assistant General Freight Agent of the Michigan Central Railroad Company; also Mr. Carder's reply to you, dated the 31st October last, which reads as follows:—

'This acknowledges your letter of October 22. We never confirmed the rate of 90 cents referred to in your letter, for the reason that we were never able to establish that rate.

'Evidently you are still without my letter of February 29, another copy of which is enclosed herewith.'

"I am further directed to state that on the statement of facts submitted, the 90-cent rate does not appear to be published. The Board has no power to direct a refund in respect of a past transaction, where goods have been carried under a rate legally filed and published; nor is the Board given power to direct that a rate, concerning which there has been discussion but which has not been published, shall be taken as the basis of adjustment.

"That it is noted that reference is made to a rate of 90 cents per ton charged by the Canadian Pacific Railway for a somewhat similar distance. The rate charged on one railway is not necessarily the measure of the rate to be charged on another railway. What weight should be given to such a comparison depends on the facts involved. If, however, in a case before the Board the 90-cent rate on the Canadian Pacific Railway is put forward as the measure of what should be a reasonable rate on the Michigan Central, the Board's power in regard to declaring what is a reasonable rate is a power to declare what is a reasonable rate for the future, and does not affect past transactions."

Yours truly,

A. D. CARTWRIGHT,

Secretary, B.R.C.

OTTAWA, March 9, 1925.

Complaint of Messrs. Samuel Hisey & Son, Toronto, Ont., against the Canadian National Railways re demurrage charges on three cars of potatoes.

File No. 1700.342

The complaint, as set forth in the complainants' letter to the Board of December 11, 1924, is as follows:—

"We wish to draw your attention to the enclosed receipt for rentals on three cars of potatoes. These cars were advised to us personally at 4.50 p.m. on Friday, November 28, just as our office was closing. Saturday is practically half a day at the best, and the Canadian National billing office on the Esplanade, Toronto, closes at 12.30, making it impossible for us to bill the cars out Saturday afternoon.

"On Monday morning at 9 a.m. our Mr. Hisey, jr., went to the billing office to divert the three cars to Parkdale, and was informed that

there was a charge of \$3 against each car for rental which must be paid. As we were allowed no free time we feel that we have been unfairly used.

"We are carload handlers only, and feel that, considering all the circumstances, we are entitled to at least half of Monday to order the cars, or on the other hand the railway company should not have advised us of the cars until Saturday morning.

"Most of the potatoes we are handling are from farmers and shippers on consignment, and with potatoes selling at 60 cents per bag bulk track Toronto, these small incidentals such as above rental charge make it very hard for the shipper to get any returns at all for his work, as we do not feel that we are entitled to charge back to our shippers this charge of \$3 per car rental, and rather than do it, if the railway company cannot see their way to refund, will have to accept the charge ourselves.

"We handled during the month of November some 150 cars of produce, and we feel that the least the railway company can do is to at least give us one clear business day to allow us to give orders on the cars."

The matter was taken up with the Canadian Car Demurrage Bureau, and investigated by the Chief Traffic Officer of the Board, and upon his report the informal ruling of the Board was communicated to the complainants by letter, dated February 6, 1925, as follows:—

INFORMAL RULING

"I am directed by the Board to inform you that on the receipt of your letter of the 11th December last (received by the Board on the 24th December) the matter referred to was taken up by the Board with the Canadian Car Demurrage Bureau for further information; that as this information did not come promptly to hand there has been delay in reply to your letter.

"I am now directed by the Board to state that the matter has been checked up by its Traffic Department, which advises as follows:—

'The three cars of potatoes covered by receipted expense bill enclosed with Messrs. Hisey & Son's letter are shown as having arrived November 28, consignee advised the same date, and the cars reconsigned on December 1, the charge being \$3 in each case for one day's delay in ordering, which is made up of one day's demurrage and one day's detention charge. Demurrage Rule 3 provides 24 hours after notice of arrival for arranging, if necessary, for reconsignment in the same car.

'Canadian National Railways tariff C.R.C. No. E-350, item 70, provides, in connection with refrigerator cars, that where shipments are not unloaded and cars released within free time, as published in Canadian Car Demurrage Rules, the following charges will be made for every 24 hours or fractional part thereof that cars are held after expiration of such free time:—

'For the first two days, \$2 per car per day or fraction thereof;

'For each succeeding day, \$3 per car per day or fraction thereof.

'In the case of the cars in question, consignee is held to be advised at 7 a.m. of November 29, which was Saturday, and reconsignment instructions were not given to the railway company until Monday, December 1, consequently (excluding Sunday) demurrage and detention charges for one day were properly chargeable under

the provisions of the Canadian Car Demurrage Rules and the provisions of the tariff as to detention charges applying on refrigerator cars.

'The record of the railway as to hour of advising and hour of receiving the reconsignment instructions is somewhat at variance with that of Hisey & Son, as shown in their letter. The railway company states advice notes were delivered at 3.45 p.m. November 28 and receipt taken for delivery of same, and that reconsignment orders were furnished at 11 a.m. December 1. However, in so far as would affect the charge, these discrepancies are not relevant.

'Messrs. Hisey & Son refer to closing of the Canadian National office on the Esplanade at 12.30 p.m. on Saturday, making it impossible for them to reconsign the cars on Saturday afternoon. The railway company advises that while the Esplanade office closes at noon Saturday, this office is only for use of car checkers taking care of Esplanade cars, the head office for Esplanade being Cherry street, which office is open Saturday afternoons. The Yonge Street and Simcoe Street offices of the railway are open also on Saturday afternoons. If, therefore, Messrs. Hisey & Son had desired they could have furnished reconsignment instructions on Saturday afternoon at any of the three offices named, which were open, and have brought themselves within the free time.'

Yours truly,

A. D. CARTWRIGHT,

Secretary, B.R.C.

OTTAWA, March 9, 1925.

ORDER No. 36118

In the matter of the Order of the Board No. 35782, dated November 12, 1924, granting leave to the Great Northern Railway Company to remove its station agent at Baynes, in the Province of British Columbia; and the complaint of Baynes Lake District Farmers' Institute against the said proposed removal.

File No. 4205.81

WEDNESDAY, the 25th day of February, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon reading the submissions filed and the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer,—

The Board orders: That the said Order No. 35782, dated November 12, 1924, be, and it is hereby, amended by adding thereto the following words, namely: "A caretaker to be appointed to see that the station building is kept clean and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to take care of L.C.L. freight and express shipments."

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 36124

In the matter of the application of the Ottawa Electric Railway Company, under Section 323 of the Railway Act, 1919, for approval of By-law No. 17, passed at a meeting of the Directors held February 16, 1924, authorizing the Secretary-Treasurer of the Company for the time being to prepare and issue tariffs of tolls to be charged for passengers carried by the Company on its railway, and to specify the persons to whom, the place where, and the manner in which such tolls shall be paid.

Case No. 2850

THURSDAY, the 26th day of February, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said by-law No. 17, repealing the company's by-law No. 10, and authorizing the secretary-treasurer of the company for the time being to prepare and issue tariffs of tolls to be charged for passengers carried by the company on its railway, and to specify the persons to whom, the place where, and the manner in which such tolls shall be paid, on file with the Board under Case No. 2850, be, and it is hereby, approved.

H. A. McKEOWN,
Chief Commissioner

ORDER No. 36134

In the matter of the complaint of the James Buckley Estate, Prescott, Ontario, against the increase in the Canadian Pacific Railway Company's switching charge from the car ferry to sidings in Prescott.

File No. 17860

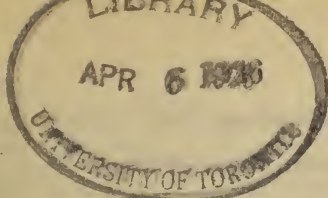
WEDNESDAY, the 4th day of March, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, September 16, 1924, in the presence of counsel for the railway company, no one appearing for the complainant, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the Canadian Pacific Railway Company be, and it is hereby, directed to establish a switching charge of 30 cents per net ton on shipments of coal, in carloads, minimum 50,000 pounds, between the car ferry and public team tracks at Prescott, Ontario, in lieu of the rate at present in force; the same to be effective not later than March 16, 1925.

S. J. McLEAN,
Assistant Chief Commissioner.



THE BOARD OF

RAILWAY COMMISSIONERS FOR CANADA

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OF

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The Board of

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Application of the Municipal Corporation of the City of Ottawa, Ontario, for an Order authorizing said Corporation to extend Lyon street, a public highway in said City of Ottawa, across the tracks of the Canadian National Railways, at rail level.

Case 4597

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The request for a level crossing over nine tracks of the Canadian National Railways by means of proposed extension of Lyon street was duly heard, and investigation has been made by the Board's Engineering Department which advises as follows:—

"As will be seen on the plan herewith, there are nine tracks to be crossed, and the proposed crossing is near the middle of the railway yard, which is to say the least, very objectionable. It would place an intolerable burden on the railway, in that it would hinder and delay switching operations, and necessitate the cutting of all trains at the crossing.

"There is not much doubt but that a crossing here would be a great convenience to many people. Street traffic would, however, be subject to many delays and to considerable danger, even though the crossing were protected by gates.

"I consider this a most impracticable place for a crossing, and recommend that the application be refused."

On the evidence and on investigation, the application should be refused.

March 5, 1925.

Commissioners Boyce and Oliver concurred.

Application of the Ottawa Electric Railway Company for permission to cross the Canadian National tracks with the tracks of the applicant company's Bronson avenue extension on Bronson avenue, without grade separation.

File 10488

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The Chief Engineer of the Board has inspected the crossing and reported. The following excerpt from his report is pertinent:—

“This proposed crossing is at grade level at the west end of the company's yard—at the throat of the yard where a great deal of shunting is done. At the present time, the street car tracks cross the Canadian National Railway track by means of an overhead bridge on Bell street, about 325 feet west of Bronson avenue; thence they run south on Bell street to Carling avenue; thence east on Carling avenue to Bronson avenue; and thence south on Bronson avenue. If the tracks on Gladstone avenue were to run directly south on Bronson avenue, it would cut out the operation of about 650 feet of track, some of it where it is located on the overhead bridge and on Carling avenue, so close together that two electric cars cannot pass.

“In order to get rid of this condition, it is proposed to substitute a grade crossing for an overhead crossing. On the grade crossing, the electric cars would be subject to delay and danger. On the present route, they are subject to some danger through collision; but I think it somewhat remote, as the portions where the tracks are close together are short and the motorman can easily see whether or not the way is clear.

“I am of opinion that the grade crossing should not be granted.”

I was not satisfied at the hearing that a case for a grade crossing had been made out; and I am of opinion that action should be taken in accordance with the report as above quoted.

March 5, 1925.

Chief Commissioner McKeown and Commissioners Boyce and Oliver concurred.

Complaint of the Paper Manufacturers of Winnipeg re preference given to Eastern buyers through the privilege of mixed carloads of paper from Port Arthur to the East.

File 33543

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

This matter was heard at Winnipeg. The case was brought on on short notice and adequate opportunity of following the rules of the Board in regard to answer and reply was, therefore, not available. It is possible that if there had been such opportunity for filing of answer and reply the issue might have been clarified. The result was that the matter was developed in a somewhat confused and unorganized manner.

In another case, at an earlier date—*Lindsley Bros. Canadian Co. vs. Great Northern Ry. Co.*, Board's File 2622.1—where the issues had been somewhat complicated, the Board sent to the parties, as an interim judgment, the report

of the Board's Chief Traffic Officer, there being allowed an opportunity to file exceptions thereto, which were to be considered before final action was taken. Both parties went in saying they had no exceptions to make and thereafter order issued.

In the present instance, a similar procedure has been followed. Copy of the interim report of the Board's Chief Traffic Officer went to the applicant and he was asked to file such exceptions, if any, thereto as he might have; and was further informed that when such exceptions, if any, were received final action would be taken.

The matter was allowed to stand for a considerable period of time for filing of exceptions. None have been received, nor has any further communication come forward to the Board. The matter is now in shape to deal with.

Mr. Martin, who appeared as the western representative of the paper mill at Port Arthur, appeared for the complainants. The Port Arthur mill manufactures different kinds of paper, and Mr. Martin stated it was their desire to ship these various commodities in one car, because the cheaper grades are generally shipped in large quantities and the better grades in smaller quantities. Complaint was made that this method of shipping may be followed with respect to shipments from Port Arthur to the east but not to the west. Shipments to Toronto jobbers were referred to, who, it was stated, are in competition with complainants in the west. The same arrangement when shipping west from Port Arthur as available when shipping east from Port Arthur is asked for.

The various kinds of paper referred to are rated fifth class, in carloads, in the Canadian Freight Classification and are under the same distinctive heading therein; consequently, from Port Arthur to the west or from Port Arthur to the east they might be shipped at fifth-class rate in mixed carloads. From Port Arthur to Toronto, the following special carload commodity rates are in effect:—

Paper, printing (other than newsprint, including surface-coated and super-calendered).....	63 cents per 100 pounds
Paper, newsprint, in bundles or rolls.....	55½ cents per 100 pounds
Paper, unfinished, for coating, in rolls.....	
Paper, wrapping, plain, not coated, oiled or waxed (will not apply on parchment or tissue wrapping paper)	
Wrappers, mill	
Paper, wall, blank, unfinished, in rolls.....	50 cents per 100 pounds

These rates are contained in Canadian National Railways' Tariff C.R.C. No. E-467, and in Canadian Pacific Railway's Tariff C.R.C. No. E-3968. These tariffs name rates on lists of paper commodities from the various manufacturing points in Ontario and Quebec to stations in Eastern Canada. Port Arthur was not a shipping station under this tariff until recently. These tariffs from the eastern mills contain a rule providing that with respect to mixed carloads of articles taking different rates the respective carload rates will be applied, subject to a minimum carload weight of 40,000 pounds, which means, of course, that in connection with a mixed carload of newsprint paper and printing paper other than newsprint from Port Arthur to Toronto, the newsprint paper would be rated at 55½ cents and the other printing paper at 63 cents per 100 pounds.

While Mr. Martin also mentioned manila envelopes, these are not really in question, because the mixed carload arrangement applicable eastbound from Port Arthur does not apply on manila envelopes, that commodity not being in the special paper tariffs.

From Port Arthur to Winnipeg, there is a special commodity rate on newsprint paper in carloads of 42 cents per 100 pounds, contained in Canadian Pacific Tariff C.R.C. No. W-2655 and Canadian National Tariff C.R.C. No. W-289. On the other description of paper referred to, the fifth-class rate applies of 57 cents per 100 pounds. While, therefore, mixed carloads of the two kinds of paper may be shipped at the rate of 57 cents, there is no provision from Port Arthur west for the application of the respective carload ratings when these two classes of paper are shipped in a mixed carload.

The arrangement as to mixed carloads at respective carload rates is one confined to stations in Eastern Canada, and eastern Canadian mills cannot ship to western Canadian points at respective carload rates; so that there is no question involved of an eastern mill having an arrangement with respect to shipments in mixed carloads to western Canadian points which is denied to the mill at Port Arthur shipping to the same territory. For example, from Toronto to Winnipeg a mixed carload of the character referred to would pay a rate of \$1.14 per 100 pounds, as compared with 57 cents per 100 pounds from Port Arthur to Winnipeg.

The representative of the railway companies stated that, finding that the arrangement as to mixed carloads at respective carload rates was in effect locally between points in Eastern Canada, they extended to the mill at Port Arthur the same privilege when shipping into this eastern territory where they would have to compete with this mixing arrangement; but so far as shipments west bound were concerned, inasmuch as there was no arrangement under which the mills in the east could ship to Winnipeg at the respective carload rates, they did not therefore establish that arrangement westbound from Port Arthur. In other words, the situation was quite different in the two territories.

The action of the railway companies in giving the mill at Port Arthur the same privilege eastbound as other mills in eastern territory with which it had to compete indicates a desire to remove any discrimination that might have been alleged. The complainant now points to this arrangement as the measure of what should govern from Port Arthur westbound, although the granting of complainant's contention would be to put Port Arthur westbound in a different situation from any other mill shipping westbound, as to-day they are all paying the fifth-class rate on a mixed carload, whereas the granting of this application from Port Arthur would put it on a lower basis, and of course their rates are already much lower than from any eastern mill on account of their shorter distance. Mr. Martin did not develop very clearly wherein, so far as the rate situation was concerned, Port Arthur is at any disadvantage in shipping to Winnipeg. He stated at *p. 5168* that Port Arthur could ship to Toronto and back to Winnipeg in competition with him. If this be so, then it is quite evident that there are elements quite aside from the question of freight rates that enter into the matter, because the rate on the printing paper from Port Arthur to Toronto is 63 cents and the rate back again from Toronto to Winnipeg is \$1.14, whereas the rate from Port Arthur to Winnipeg is 57 cents. That the question of rates is not the whole factor to be considered is further indicated by the discussion at *p. 5173*, reading as follows:—

“MR. MARTIN: If one man is in the interior and another man has his goods in Toronto, the difference in rates on one car great or small does not enter into the mind of the publisher at all.

“THE ASSISTANT CHIEF COMMISSIONER: Can the commodities you are producing be laid down in Winnipeg from Toronto, if that is the point of distribution, in competition with you on a lower freight rate?

“MR. MARTIN: No, sir. The larger publications are taken from this part of the country and printed in Toronto on the same stock we supply and mailed from Toronto to the western country.

"The ASSISTANT CHIEF COMMISSIONER: So far as you are concerned, your competitor at Toronto cannot lay goods down here at lower rates than you can from Port Arthur?"

"Mr. MARTIN: No, sir. But the business is taken to Toronto and shipped out to the western country after they pay freight on their materials, to the detriment of the publishing business in this country.

"Mr. STEPHEN: Suppose a man brought his goods in by motor truck and warehoused them, and got an order from Winnipeg and made up a mixed car, what would he pay from Toronto here?"

"Mr. MARTIN: The regular rate.

"Mr. STEPHEN: \$1.14?"

"Mr. MARTIN: Exactly.

"Mr. STEPHEN: You can mix from the Head of the Lakes to Winnipeg?"

"Mr. MARTIN: Yes, by raising the rates.

"Mr. STEPHEN: By paying the 57 cents?"

To cancel the arrangement from Port Arthur eastbound would, on the submission made by Mr. Martin, remove the grounds for his complaint; but it would not help the situation, because Toronto, which is the point he referred to in evidence, could still purchase from other paper manufacturers at much shorter-distance points.

An important feature of this matter, however, is that with respect to the evidence given at Winnipeg by Mr. Martin there was absolutely nothing adduced to show how the rate situation complained of actually reacts to the detriment of the complainants. In substance, there was simply the submission as to the difference in treatment from Port Arthur eastbound as compared with westbound. The origin of this has already been explained herein, viz., there was extended to Port Arthur in shipping into eastern territory the same tariff arrangement that was in effect in the east long before the Port Arthur mill commenced operation. There were no data furnished by complainants showing that the existence of the rate situation complained of had resulted in taking away any business from them that they formerly enjoyed; there was nothing submitted showing what business goes to the Toronto jobber as a result of the rate situation complained of that the Winnipeg jobber feels belongs to that market; there was nothing submitted showing what proportion of this business the complainants might reasonably expect to share under a rate adjustment; nor was there anything showing what reduction in rate would be necessary to make a change in the situation.

The Board has ruled that one criterion of unjust discrimination is whether the district alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place.

Wegenast vs. G.T.R. Co., 8 Can. Ry. Cas., 42, at p. 45.

Toronto and Brampton vs. G.T.R. and C.P.R. Cos., 11 Can. Ry. Cas., 370, at p. 375.

Massiah vs. C.P.R. Co., 18 Can. Ry. Cas., 358.

The Board has also held that in dealing with discrimination it should take into consideration whether there is actual competition in the same markets between the companies concerned, and in respect of the products concerned; and where there was no such competition it has held that difference in rate did not constitute an unjust discrimination or undue preference.

Michigan Sugar Co. vs. C.W. & L.E. Ry. Co., 11 Can. Ry. Cas., 353, at pp. 362-363.

Where no evidence was submitted of any rate advantage possessed by any competitor which rendered it more difficult for the applicant to do business, the allegation of unjust discrimination was held to be unfounded.

Ontario Paper Co. vs. G.T.R. Co., 24 Can. Ry. Cas., 177.

Plunkett & Savage vs. Express Traffic Assn., 28 Can. Ry. Cas., 402, at p. 407.

Spanish River Pulp and Paper Mills vs. C.P.R., 28 Can. Ry. Cas., 100, at p. 109.

On the record before the Board, action asked for by the applicant is not justified.

March 10, 1925.

Commissioner Boyce concurred.

COMMISSIONER OLIVER:

John Martin, of the John Martin Paper Company, Winnipeg, appeared in support of the application.

This application consisted of a complaint of discrimination in shipment of mixed carloads of paper, as between eastern paper mills and the mill at Port Arthur, Ont. Mixed cars could be shipped in any direction from eastern mills, but not to points further west than Fort William, each class of paper in the car paying its share of the gross carload cost, according to the rate of its class. The same privilege was permitted on eastbound shipments from the Port Arthur mill, but not on shipments to Winnipeg and other points westward.

Mr. Martin, on behalf of the wholesale paper trade of Winnipeg, asked that the same privilege as to mixed cars now allowed on shipments from Port Arthur eastward, should be allowed from Port Arthur westward.

No reason was given by the railways for the discrimination between shipments eastbound and westbound from the Port Arthur mill, than that eastern mills were allowed the mixed car privilege only as far west as Fort William, therefore the mill at Port Arthur should not be allowed the privilege west of that point; and that the arrangement which fixed Fort William as the westerly limit of mixed car shipment from eastern mills had been made before the Port Arthur mill was built.

I beg respectfully to submit that the building of the Port Arthur mill at the westerly limit of mixed car shipment from eastern mills created a changed condition; and that the regulations covering shipments of mixed cars from that mill should have been adapted to the new condition and placed on the same basis as those applied to eastern mills.

The western limit of mixed car shipment for eastern mills was fixed with regard to shipments originating a thousand miles away. I submit that it is not reasonable to apply the same limit to a mill operating within five miles of it, or to retain that limit in regard to such mill, after the western customers of the mill have formally complained to the Board, as Mr. Martin did.

For the reasons given, I am unable to concur in the judgment of the Assistant Chief Commissioner in this matter.

OTTAWA, March 12, 1925.

Complaint of the Canada Cement Company, Limited, Montreal, P.Q., against increases shown in the rates on cement and stone dust in Canadian National Railways Supplement No. 28 to G.T.R. Tariff C.D. 88 C.R.C. E-4441, effective July 19, 1924.

File 29385.4

Heard at Montreal, P.Q., November 14, 1924.

JUDGMENT

COMMISSIONER BOYCE:

After the hearing of this application at Montreal it was suggested and agreed that the parties should meet and discuss the differences involved with a view to a possible agreement, and the disposition of the case was suspended for that purpose. The parties met, as agreed, but arrived at no agreement, and the Traffic Department of the Board was requested to report upon all traffic features involved in the complaint. The report of the Assistant Chief Traffic Officer, dated January 5 last, and hereto attached, deals fully with all that is in controversy and disposes of the questions involved, in a manner satisfactory to the Board. As the report is in detail, I would adopt and issue it as the judgment of the Board, and issue order in terms of its conclusions.

By way of explanation it is to be noted that the station of Ste. Gregoire, which is mentioned in the fourth paragraph from the end of Mr. Brown's report, is on the line to Doucet's Landing; St. Nicholas, which is referred to in the final paragraph of the report, is the next station to Chaudiere, a distance of three miles therefrom (see C.N.R. Time-table No. 26); and St. George, also mentioned in the last paragraph of Mr. Brown's report, is in the group of stations St. George to Nicolet, shown in the same time-table as the next station to Ste. Rosalie.

Order to go as above.

OTTAWA, March 11, 1925.

Assistant Chief Commissioner McLean concurred.

REPORT OF ASSISTANT CHIEF TRAFFIC OFFICER

This complaint was first made against the increase of $\frac{1}{2}$ cent per 100 pounds in the rates on cement from Montreal to Upton, St. Liboire, and Britannia Mills, P.Q., effective July 19, 1924, in Supplement 28 to Grand Trunk Railway Tariff C.R.C. No. 4441. The complaint was afterwards enlarged to include an application for a general readjustment of rates on cement from Montreal to stations on the Canadian National lines in Quebec south of the St. Lawrence river to the same basis as was published to Canadian National stations north of the St. Lawrence river for equivalent mileage.

At the hearing of the case in Montreal it was suggested that the parties get together and endeavour to arrange a settlement. At the conference between the parties the railway company offered to reduce rates, Charney to Ste. Julie, inclusive, from $16\frac{1}{2}$ cents to $15\frac{1}{2}$ cents per 100 pounds; Plessisville to Victoriaville, and Walker's Cut to Ste. Eulalie, from $16\frac{1}{2}$ cents to $14\frac{1}{2}$ cents per 100 pounds; Upton to St. Hyacinthe, from $10\frac{1}{2}$ cents to 10 cents per 100 pounds; also to absorb the entire amount of the Harbour Commissioners' switching, amounting to \$5 per car, in place of the present absorption of \$3.

Mr. Hamilton refused to accept this adjustment unless the rate to St. Hyacinthe and Ste. Rosalie Junction were reduced to $9\frac{1}{2}$ cents; and to Ste. Madeleine, St. Hilaire, and Beloeil to 8 cents per 100 pounds.

If the traffic and operating conditions were the same on movements from Montreal to stations south of the St. Lawrence as to stations north thereof, there would be considerable merit in the cement company's application for the same rate basis for equivalent mileage on each line. In the movement of cement to points south of the river, however, it is necessary to use the tracks of the Harbour Commissioners, for which a charge of \$5 per car is made, and in making a comparison, the net earnings of the railway should be considered.

The company has proposed a rate of 10 cents to St. Hyacinthe, 36 miles, and to Ste. Rosalie Junction, 39 miles. On the basis of the minimum carload weight for cement of 60,000 pounds, the net earnings of the company would be \$55 (60,000 pounds at 10 cents per 100 pounds, less \$5), or 9.17 cents per 100 pounds, as compared with net earnings of \$57 per car to Joliet, 37 miles, and Crabtree, 32 miles, north of the river.

To Ste. Madelaine, 29 miles, the rate is 9½ cents per 100 pounds, and net earnings would be \$52, or 8.67 per 100 pounds, as compared with Salomee, 30 miles, \$57, on a rate of 9½ cents per 100 pounds.

To St. Hilaire, 23 miles, and Beloeil, 22 miles, the net earnings would be, at the rate of 9 cents per 100 pounds, \$49, or 8.17 cents per 100 pounds, as against an earning of \$48 at rate of 8 cents per 100 pounds published to L'Epiphanie, 24 miles, and L'Assomption, 21 miles. It will therefore be seen that the net earnings of the company is actually less to three of the points on which there was a disagreement and but 0.17 cents higher to the other two, as compared with movements for equivalent distance on Canadian National lines north of the St. Lawrence river.

The company's offer to absorb the entire Harbour Commissioners' charge in addition to the adjustment of the rates intermediate to Quebec is, in my opinion, a liberal one, and I therefore recommend that the offer of the rates as contained in letter of Mr. R. W. Long to Mr. Alistair Fraser, dated December 19, 1924, be accepted as a proper adjustment of rates on cement from Montreal to Grand Trunk Railway points, except that the 15½ cents rate should also be published to stations north of Aston Junction to St. Gregoire.

No action appears to have been taken in connection with rates to Intercolonial Railway points between Ste. Rosalie Junction and Chaudiere, including the Nicolet branch, but as this line is adjacent to the Grand Trunk and a part of the Canadian National Railways a similar basis of rates should be applied.

I therefore further recommend that the railway company be required to make adjustment in rates on cement from Montreal,—

To stations Aston Junction to St. Nicholas, inclusive, 15½ cents; St. George to Nicolet, 15½ cents; St. Leonard, 14½ cents per 100 pounds; and that to points between Ste. Rosalie Junction and St. Leonard the rates be reasonably scaled.

Respectfully submitted.

GEO. A. BROWN,
Assistant Chief Traffic Officer,

OTTAWA, January 5, 1925.

ORDER No. 36169

In the matter of the complaint of the Canada Cement Company, Limited, against the increase in the rates on cement and stone dust shown in the Canadian National Railway Company's Supplement No. 28 to G.T.R. Tariff C.R.C. No. E-4441, effective July 19, 1924.

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Montreal, November 14, 1924, in the presence of a representative of the complainant company and counsel for the railway company, and what was alleged; and upon the report and recommendation of its Assistant Chief Traffic Officer,—

1. That the Canadian National Railway Company file and publish tariffs showing the following adjustment in the rates on cement and stone dust from Montreal, namely:—

2. That rates to stations between Ste. Rosalie Junction and St. Leonard be reasonably scaled.

S. J. McLEAN,

Assistant Chief Commissioner.

File 33679

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Pine street is the name of the street to the east, while on the west side of the right of way it is shown as Oliver street on the plan. East of the right of way, Pine street connects with Gladstone avenue. With the opening up of the crossing at the point asked for, there would be a continuous street east and west from Cartier street to Parkdale avenue.

As bearing on the need for the opening up of the crossing, the city points out that there is a crossing on Carling avenue and one on Somerset street, but that there is no crossing available for the large intervening district. The city stated there were some 15,000 people resident in the city area which is west of the railway right of way. Mr. McDougall, who appeared for the Ratepayers' Association, stated there were some 21,000 people in this area. This estimate was repeated by Mayor Balharrie in his statement in support of the crossing.

The Canadian Pacific track is the old Ottawa and Prescott Branch, and over this section regular passenger trains are not being run. The Canadian National is a spur line in connection with the business from Booth and Eddy's mills.

In connection with the Canadian Pacific, there is a siding serving Oliver & Son's factory, and there is a stub-end siding to serve the Standard Bread Company. This does not cross the highway at the proposed point of crossing. It is stated, however, by the railway that cars standing on this siding would obstruct the view.

The movements on the Canadian Pacific tracks for 48 hours are shown to be some 44 light engine movements and 10 freight train movements. The Canadian National, when the limit yards are in operation north of this point, have an average of 16 movements per day over the point of crossing, and when business is slack an average of about 10 movements per day.

The Canadian Pacific interposed certain objections to the proposed point of crossing, turning on the question of view and the situation in connection with a cut which would be necessary west of the west side of the Canadian Pacific Railway right of way, in order to afford access from the level of Oliver street to the level of the tracks; but, in further discussion, there was a recognition of the justifiability of a through thoroughfare and the crossing necessarily incidental to it. The railway then stated that if the Board was of opinion that the crossing should be granted, it was submitted that protection by gates should be ordered, the expense of installation, maintenance and operation being on the applicant.

The Canadian National stated that so far as the crossing of its lines was concerned, there was no objection; but there should be a watchman there, at the expense of the city.

The city admits the seniority of the Canadian Pacific at the point in question. There was some dispute as to the respective rights of the city and of the Canadian National in regard to the crossing over the right of way of the latter. Right was reserved to the legal representative of the Canadian National to file further material bearing on this matter. If the Canadian National has seniority rights at the point in question, they will not be prejudiced by the matter being dealt with now.

Various features in connection with the engineering conditions involved have been referred to in a general way. Put in a more summary way,—approaching the crossing from the east, there is an excellent view of trains on both tracks. Approaching from the west, the view of trains from the south on the Canadian Pacific main track is obstructed, by the Oliver factory, until one is within 40 feet from the track. When cars are on the siding, this view is somewhat further limited. The view of trains from the north, on the Canadian Pacific track, is obstructed until one is about 60 feet away, by the factory of the Standard Bread Company. This view is also somewhat further limited when there are cars on the Bread Company's siding. Approaching the Canadian National track from the west, the view is open and clear.

I am of opinion that the crossing as asked for should be allowed. Protection by the installation of bell and wigwag at the point where the crossing is carried over the Canadian Pacific tracks should be provided. Twenty-five per cent of the cost of installation of bell and wigwag is to be paid out of the Grade Crossing Fund; the balance of cost of installation, as well as cost of maintenance, is to be borne by the city.

Pending the installation of the bell and wigwag, the crossing should be protected by a watchman, at the expense of the city.

As pointed out, the Canadian National alleges seniority rights at this crossing. In addition to the question of grading, which will not involve a heavy expense, the company sets out that it has a frog which will be in the centre of the proposed street and which will require to be removed 35 feet north to be clear of the street crossing. It is stated it will also be necessary to install a 30-inch pipe adjoining the company's tracks for drainage which comes from the south, near the Oil Company's siding.

The question of cost of construction and maintenance of the crossing over the Canadian National line, involving any change necessitated thereby, will be dealt with by the Board when the submissions in regard to seniority, which the railway is to make, are before the Board; an opportunity, of course, being reserved to the city to make such submission as it deems fit in regard to these submissions.

I understand that so far as the grading of the crossing is concerned, this will be a matter of relatively small expense, as the city has grading material available which could readily be used at the point in question.
March 11, 1925.

Chief Commissioner McKeown and Commissioner Oliver concurred.

Application of the Ottawa Electric Railway Company, for an Order, under section 252 of the Railway Act, for leave to cross the tracks of the Canadian National Railways, with its tracks along the existing subway, known as the "Elgin Street Subway", at the intersection of highway known as Elgin Street Diversion, with the tracks of the Canadian National Railways, in the City of Ottawa.

File 16558.2

Heard at Ottawa, December 2, 1924

JUDGMENT

COMMISSIONER BOYCE:

The application of the Street Railway Company, to the Board, for an order permitting it to carry its double track electric street railway under the tracks of the Canadian National Railways, by using the Elgin Street Subway, at the foot of Elgin street, is made in pursuance of the agreement between the City of Ottawa and the Street Railway Company, providing *inter alia*, for the extension of the street railway, now on Elgin street, southerly, to connect the Elgin street line with a line to be run from the west end of Pretoria Avenue bridge, easterly, through Ottawa East. The use by the Street Railway Company of what is known as the Elgin Street Diversion, which is the street now carried under the subway, for this extension of the Elgin street car tracks is undoubtedly the most convenient and feasible method of effecting the extension contracted for. The railway company (now the Canadian National Railways) whose tracks cross the subway, put no obstacles in the way of the use of the subway for this purpose, beyond the necessary stipulations as to the maintenance in all respects of the safety of the bridge carrying their tracks. This is an engineering feature presenting no difficulty and must be provided for. It is pointed out that to get sufficient head-room in the subway for the street cars the grade of the Elgin Street Diversion in the subway will have to be lowered about three feet. That also, with several other incidental features referred to at the hearing, is a matter of engineering. It involves the proper replacing at lower depth of any city water or sewer pipes, or any other service

or conduit pipes, or ways, affected by the disturbance and replacement of the ground involved in the construction of the extension of the street car tracks.

The city of Ottawa does not oppose the application, but points out that under order of the Railway Committee of the Privy Council, November 22, 1902 (No. 19533) it has certain rights and interests which should be observed and protected in any order now made. The city filed a copy of its by-law, No. 2253, dated March 30, 1903, which sets forth the changes made in Elgin street in furtherance of the provisions made for the subway by the Privy Council order above referred to. The plan, dated June 5, 1902, filed on the application for that order shews the changes and diversions of Elgin street evidenced by the city by-law above referred to. The extension of the street railway necessitating this application is, as stated, the result of the contract between the city and the street railway company. The city's rights under the order of the Railway Committee of the Privy Council, and furthered by its by-law, above-mentioned, will not be jeopardized by any order to be made upon this application.

The Ottawa Improvement Commission, the applicant in 1902, for the subway, submits its rights and interests to the protection of the Board. It contends that its user of that part of the street, a part of its driveway system, passing under the subway, will be interfered with, if the street cars run through the subway, on account of congestion of traffic. It contends that a fair proportion (suggested at two-thirds) of its capital expenditure of \$19,500, involved in the original subway scheme, should be borne by the street railway company as a condition of any order to be made upon this application, and that the street railway company should indemnify the Commission against all expenditure involved upon it, on account of change of grades necessitated by the lowering of the street level to permit cars to pass under the subway. The Commission also emphasizes the increase in danger and necessity for protection involved in carrying the street car lines under the subway.

As to the first contention I see no merit in it. The street passing under the subway, although a part of the Driveway System, under the management of the Improvement Commission is, to all intents and practical purposes, a city street, and is used as such, and has been so used, by pedestrians and vehicular traffic of all descriptions. No other street is available at that point. It is a main avenue for city traffic.

The building of the subway, under the special terms of the Privy Council Order of 1902, carried the Commission's street, or roadway, under the railway tracks, in order that all vehicular and pedestrian traffic should be at liberty to use it free from the danger of a level crossing. The street railway company applies with respect to conditions as they are now. Had there been no subway, the street railway would have had to cross the railway on the level, or apply for a subway. But, it applies for leave to use the surface of the street now existing and running under a subway constructed over twenty years ago, for the benefit of public traffic, which has used it ever since. I see no argument to warrant the imposition of any part of the capital cost involved upon the Commission in the construction of the subway. The railway makes no such contention. I think that this contention cannot be given effect to. The other contentions mentioned deserve more consideration.

Since the hearing, the plans and proposals of the applicant have been examined, in a preliminary way, by the Chief Engineer of the Board, on the ground, after notice to, and in presence of, representatives of all parties represented at the hearing. The proposals of the applicant include the laying of a double track, one on either side of the centre column supporting the bridge-way and allowing one foot clearance between the sides of the cars and the

columns, leaving approximately, 14 feet 9 inches clear space for vehicular traffic between the sides of the cars and the side of the roadway, or more than there is at present in the Bank street subway, a more congested thoroughfare, and through which the street railway operates a double track traffic, and where the same clearance is but 12 feet 8½ inches.

The Chief Engineer further states that, there is no obstacle of an engineering character in the way of granting the application and he shews that the grade of the roadway in the subway can be lowered to give necessary headroom without endangering the structure.

The Chief Engineer further deals with the question of the increased traffic. He points out that a number of lines of traffic converge on the subway north and south thereof, but that the principal danger to be provided against is the converging traffic from the north where the traffic from the Driveway, east of the subway, meets the traffic from the north along Elgin street, going into the subway, and that from all points south concentrated into and emerging, travelling north, from the subway. At present, this can be sufficiently protected by a limitation of speed of all street cars entering the subway and while passing through the whole extent of the slopes into and out of the subway to six miles per hour.

I am of opinion, therefore, that the order should go granting the application, upon the following terms:—

(a) All the works are to be conducted under the supervision of, and when completed, and before operation, to be approved by, the Chief Engineer of the Board, who will in such supervision and approval, confer with the engineers of the street railway company; the city of Ottawa; the Ottawa Improvement Commission, and the Canadian National Railways. The decision of the Board's Engineer, in case of any difference of opinion, to be final; unless, in his opinion, a reference to the Board is thought necessary to the decision of any question that may arise touching the performance and completion of the work.

(b) No cars of the street railway company to be operated, unless and until further order of the Board is made granting such permission, upon the report of the Chief Engineer.

(c) All cars of the street railway company shall at all times be operated through the subway and in the approaches going into and emerging from the subway, at a speed not exceeding six miles per hour.

(d) The street railway shall, at its own expense, pave and maintain the roadway in and entering the subway between its tracks, and for eighteen inches on either side thereof, with the same material as the said roadway is now paved, and as and when changes are made in the paving of the said roadway shall repave of the same material so that at all times the pavement between the street railway tracks and for eighteen inches on each side thereof shall conform to the grade and material of the whole roadway.

(e) The street railway company shall bear and pay the whole expense of the said work, which expense shall include all costs otherwise entailed upon the Ottawa Improvement Commission in the alteration of the grade of its roadway approaching the subway from both ends consequent upon the lowering, or other alteration of the grade necessary for the obtaining of necessary headroom for applicant's cars, and replacing of all service pipes, or sidewalks.

(f) All questions as to further protection of traffic and the cost thereof, and all other incidental questions are reserved to be disposed of by the Board, as and when occasion arises; and

(g) Nothing in the order shall affect the rights and interests of the several parties concerned, under—

(1) The agreement between the City of Ottawa and the Street Railway Company, providing for such extension of the tracks of the latter company;

(2) Order No. 19553, dated November 22, 1902, of the Railway Committee of the Privy Council referring to the said subway; and

(3) By-law No. 2253, of the City of Ottawa, dated March 30, 1903, and any amendments thereof heretofore made.

OTTAWA, March 11, 1925.

Chief Commissioner McKeown, Assistant Chief Commissioner McLean and Commissioner Oliver concurred.

Complaint of the Eustis Mining Company, Eustis, Que., with regard to excessive rates in effect on the Boston & Maine Railroad from Eustis to Lennoxville, Que., on Iron Sulphur concentrate for furtherance to other points in Canada, over the C.P.R. and C.N.R., and that a switching rate be re-established in order to get the applicant company's products to Canadian markets. File 33829.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The applicant, the Eustis Mining Company, owns and operates a mine and mill which are located at Eustis, in the province of Quebec, 5.38 miles south of Lennoxville and 8.29 miles from Sherbrooke.

The company is at present producing two products: one a copper concentrate which is being shipped to Portland, and the other an iron sulphur concentrate which was also referred to in the record as a pyrite concentrate.

The iron sulphur concentrate was sold in Canada for some time; but it was stated that the plant which was using this product was burnt and, consequently, the applicant is now stocking the product, and in the meantime seeking to find a market for it. In looking around for a possible outlet, attention has been devoted to the city of Hamilton and the manufacture there of sulphuric acid; and it is stated that this point and, possibly, other points adjacent to it, offered a most promising outlook for the sale of the sulphur concentrate. At Hamilton, there is competition from various sources. From Eustis to Hamilton is a distance of 490 miles. There is also competition from a point called Edwards, in the state of New York, which is located 331 miles from Hamilton. It is represented, however, that the competition from this source will not continue.

In addition, to competition from plants producing the same or identical product for use in the manufacture of sulphuric acid, there is also the competition of the brimstone mines. Pyrites, used for the manufacture of the acid, have a content of approximately 50 per cent sulphur, 45 per cent iron; the balance of the content was not referred to in the record; presumably it is of negligible importance. On the other hand, in brimstone, the sulphur is the one element of value, and it is practically pure up to 99 per cent.

During the war, the acid makers in the United States and in Canada mostly used pyrites. At the same time, the demand gave a great impetus to production in the sulphur mines in Texas and Louisiana, with the result that the production of brimstone has been largely increased, and it is now selling at a lower rate per ton than it did prior to the war.

Brimstone comes in by water from the Southern States to Montreal. Questions were asked in the course of the hearing devoted to ascertaining whether there was any movement by water from Montreal to Hamilton. No definite information on this was vouchsafed. However, it was stated that the combination of the water rate to Montreal, plus the rail rate therefrom, placed Hamilton about the dividing point from the standpoint of cost of delivery as between waer and rail on the one hand and all rail on the other.

Subsequently, it was stated as an "impression" that the cost of getting to Hamilton "would be about equal to go by boat into the St. Lawrence river and then by smaller boat to Hamilton, or else to come straight across the country."

On the evidence as developed, a competitive condition exists at Hamilton and the representative of the applicant very frankly stated that the Hamilton price fixed his maximum. It was stated that the ability of the company to continue its operations hinged very largely on its power to market the "cheap" sulphur iron concentrate. The value was spoken of as being not in excess of \$4 per ton.

In order to reach Hamilton, an initial haul from the Boston and Maine line is necessary. The distances to Lennoxville and Sherbrooke are as already stated, and the rate charged from Eustis to both these points is the same. It appears that originally the rate as quoted was from Eustis to Lennoxville. Subsequently, it was extended to Sherbrooke, this being equivalent to a reduction in rate. At Lennoxville, the Boston and Maine line terminates, and from there to Sherbrooke it has trackage arrangements over the line of the Canadian National. It was stated by the representative of the railway that there were operating advantages in having the interchange at Sherbrooke instead of at Lennoxville.

In view of the fact that the extra haul to Sherbrooke does not involve an extra charge, it does not appear to be necessary to go into this phase of the matter.

The applicant states that he has been able to make satisfactory rate arrangements with the Canadian National in respect of the haul from Lennoxville to Hamilton; but the criticism is directed against the rate charged by the Boston and Maine.

The rate at present, and since June 16, 1924, from Eustis to Sherbrooke has been 60 cents per gross ton, with provision for minimum earnings of \$15 per car. Applicant refers to a rate which at one time existed, viz., 20 cents per ton from Eustis to Lennoxville, and asks that there should now be a switching rate put in of \$10 per car. It was stated that the cars could be loaded to capacity about 40 tons; this would give a resultant rate of 25 cents per ton.

The history of the rates since 1908 is that from February, 1908, until October 28, 1915, the ore in question was carried from Eustis to Lennoxville at 20 cents per net ton, with a minimum of 24,000 pounds. On the latter date, as has already been indicated, the rate was extended to cover Sherbrooke. The next change was in March 15, 1918, when the rate was increased to 23 cents per net ton, minimum 24,000 pounds. This was under the Board's General Order No. 212 which allowed a 15 per cent increase. On August 30, 1918, the rate was increased to 30 cents per net ton under P.C. 1863. On October 4, 1920, the rate was increased to 40 cents per net ton under General Order No. 308; and, as has been indicated, there was a further increase on June 16, 1924, to 60 cents per gross ton. The latter increase was not based on any order or sanction of the Board.

In arguing for a reduced rate, the applicant, naturally, lays stress on the low value of his product. This is in harmony with a change in point of view which has taken place,—a change which has not always been appreciated. There was a time not so long ago when any suggestion that a rate should be based on value, or, in other words, on what the traffic will bear, was objected to as being

in the nature of a plea for extortion; and it was commonly argued that the proper basis for rail rates was cost of the service.

To enter into the ramifications of these two lines of thought would take one far afield, but it is to be noted that where formerly the shipper laid stress on cost and looked askance at "what the traffic will bear," the conditions have now changed and the common argument from the railway standpoint is one of cost, and an equally common argument from the standpoint of the shipper is what the traffic will bear.

The applicant put forward very clearly the condition to which he was subjected and the business difficulties which he underwent; and if the matter could be dealt with from the standpoint of sympathy alone the way would be easy. The Board, however, recognizing the limitations of the powers given it by Parliament, has to hold to the position that while the burden is on the railway of maintaining reasonable rates the needs of the producer do not afford a final measure of what a reasonable rate should be. The Board has no power to regulate tolls for the purpose of equalizing costs of production or geographical, climatic or economic conditions.

Canadian China Clay Co. vs. C. P. and C. N. R. Cos., 18 Can. Ry. Cas., 347
Dominion Millers' Assn., Toronto Board of Trade and Montreal Corn Exchange vs. Can. Frt. Assn. 21, Can. Ry. Cas., 83.

Bearing in mind the changed conditions in regard to cost which have taken place in the last few years, the 25-cent rate asked for is not one which the Board would be justified, on the record before it, in ordering.

In dealing with the 60-cent rate at present in force, as has been pointed out this was filed by the railway without any sanction other than compliance with the provisions of the Railway Act in regard to filing and publishing, and, therefore, some further analysis is necessary.

In setting the matter down for hearing, the railway was instructed to turn its attention to supplying the Board with data regarding actual cost of handling the traffic in question between the points named. This was done so that no suggestion of surprise might be made.

In the course of the hearing, the representative of the railway was asked if he had any particular data bearing on the cost of operation under the existing rate. He replied in the negative. All he had to say was, in substance, that in comparing the rate with various switching rates they were charging, the 40-cent rate was regarded as being too low.

The 60-cent rate became operative on June 10, 1924, at a time when, from the evidence, no traffic was moving; and the fact that no objection was then filed with the Board creates no argument in favour of the retention of the rate.

By section 331, subsection 3, it is provided that where there is objection to any special freight tariff filed with the Board, said tariff carrying advances, the proof of justifying the proposed advances shall be upon the company filing said tariff.

By subsection 4 of the same section, the Board has power to disallow or suspend a tariff, notwithstanding the fact it has become operative by complying with the statutory requirements as to filing and publishing.

The question of the reasonableness of the 60-cent rate is involved in the present application. In regard to the other increases from the 20-cent rate up to the 40-cent rate, these changes have, in one instance, been made as a result of a direction of the Privy Council and in the others under sanction of orders of the Board made after investigation. In all these increases, it has been recognized that increased costs have justified the increase in rates. It is to be regretted that the necessity for maintaining these rates on their existing level has not yet passed; unfortunately, high costs continue.

In regard to the 60-cent rate, however, I am of the opinion that the railway has not borne the burden of proof which the statute imposes on it; and I am, therefore, of the opinion that the 60-cent rate should be disallowed, and the rate of 40 cents per ton hitherto operative should be reinstated.

March 11, 1925.

Chief Commissioner McKeown and Commissioners Boyce and Oliver concurred.

Application of residents of Hendon, Saskatchewan, and surrounding community, that the Canadian Pacific Railway Company be responsible for goods or freight as soon as received, and that conductors of trains sign bills-of-lading at Hendon Station upon receipt of freight.

File No. 3678.72

Applicants allege that conductors of trains accept freight at Hendon but refuse to sign bills of lading in receipt of same; that freight is thus carried to nearest station before bills of lading are signed and shipper receives receipt for goods shipped; and that in the meantime if goods are lost the shipper has no protection. The applicants ask that the Board endeavour to adjust the matter so that the Canadian Pacific Railway Company will be responsible for goods or freight as soon as received, and to have conductors of trains sign bills of lading at Hendon station upon receipt of freight.

The application was taken up with the Canadian Pacific Railway Company and in its answer stated that the applicants do not state what kind of freight they have in mind, but assumed that the commodity involved grain; that the Company's conductors have instructions to accept bills of lading at flag stations and take them to the next regular agency where the agent signs the bill of lading and either returns it to the shipper by registered letter or mails it by registered letter direct to the consignee, if so instructed by the shipper; and that the Company's officials do not think it would be advisable to permit conductors issuing the grain bills of lading themselves, as this practice is open to many grave objections.

INFORMAL RULING

In a similar application made by Mr. J. B. Manderson, of Ryley, Alberta (File 3678.31), the Board ruled that flag stations and private sidings are put in for the purpose of conveniencing the shippers although there is not enough earning at the particular point to warrant the expense of the regular station staff, and that movements from such points are governed by the 9th section of the Standard Bulk Grain Bill of Lading, which is as follows:—

“Bulk grain shipped from a private siding or a station where there is no duly authorized agent shall be at the risk of the owner until the car is lifted or bill of lading is issued by the carrier, and thereafter shall be at the risk of the carrier. Bulk grain destined to a private siding or station where there is no duly authorized agent shall be at the risk of the carrier until placed on the delivery siding.”

The usual and proper practice where there is no agent to sign and initial proper bill of lading is for the conductor to take it to the first station where it is then signed by the agent and returned to the shipper. Conductors refusing to accommodate shippers should be reported to the railway company, and in case of persistent withholding of facility from shippers, complaint should be made to the Board. The grain car should be sealed, the conductor of the freight train having a press for that purpose.

The Board directed that Mr. J. F. McLeod, who filed the application on behalf of the residents of Hendon, Sask., and surrounding community, be advised of this informal ruling.

OTTAWA, March 25, 1925.

ORDER No. 36164

In the matter of the application of the Railway Association of Canada, under Section 345 of the Railway Act, 1919, for permission to issue free transportation to one Chief Inspector and six Inspectors of Live Stock Cars and Yards of the Department of Agriculture of the Dominion Government.

File No. 496.26.3

THURSDAY, the 12th day of March, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application, and considering what is filed in support thereof,—

The Board orders: That railway companies within the legislative authority of the Parliament of Canada be, and they are hereby, permitted, until further order, to issue free transportation to one Chief Inspector and six Inspectors of Live Stock Cars and Yards of the Department of Agriculture of the Dominion Government; the free transportation to the six Inspectors herein authorized to be limited to the territory in which each Inspector is officially required to travel.

2. That Order No. 30137, dated September 24, 1920, made herein, be rescinded.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 36178

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," for a further extension of time within which the existing station limits rule (Special Instruction "E") may be continued in the working time-tables:

File No. 4135.26.2

MONDAY, the 16th day of March, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is filed in support of the application, and the matter as to the operation now carried by Special Instruction "E" being under the consideration of His Excellency in Council, it is desirable to maintain matters in *status quo*,—

The Board therefore orders: That the time within which the necessary changes and instructions to employees of the applicant company, to observe the Uniform Code of Rules for Canadian Railways approved by General Order No. 42, dated July 12, 1909, may become effective, be, and it is hereby, further extended until the 15th day of June, 1925.

H. A. McKEOWN,

Chief Commissioner.

GENERAL ORDER No. 413

In the matter of the application of the Railway Association of Canada for certain amendments to Rules 93 and 99 of the General Train and Interlocking Rules, in order to provide for the method of operation now employed by certain of its member railways, under so-called Special Instruction "E":

File No. 4135.26

MONDAY, the 16th day of March, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*Hon. FRANK OLIVER, *Commissioner.*

Whereas, by General Order No. 322, dated December 10, 1920, all railway companies subject to the jurisdiction of the Board were required to withdraw the said Special Instruction "E" from their respective working time-tables, and thereafter observe the Uniform Code of Rules for Canadian Railways, approved by General Order No. 42, dated July 12, 1909—the necessary changes and instructions to employees to become effective June 1, 1921;

And whereas the time within which the said changes and instructions might become effective was extended, by General Orders Nos. 340, 343, 397, and 411, until June 15 and September 1, 1921, August 1, 1924, and January 31, 1925, respectively, or until further order of the Board;

And whereas an appeal from the Board's General Order No. 397, dated April 16, 1924, to the Governor General in Council is still pending;

And whereas the Governor General in Council, by Order in Council P.C. 2140, dated December 11, 1924, rescinds the sanction given by Orders in Council P.C. 1405, of By-law No. 98 of the Canadian Pacific Railway Company; P.C. 1824 of By-law dated the 3rd September, 1924, of the Quebec Central Railway Company; and P.C. 1934, of By-law No. 4 of the Central Canada Railway Company, in so far only as such sanction is applicable to Rule 93A,—

The Board orders: That the time within which the said changes and instructions may become effective be, and it is hereby, further extended until the 15th day of June, 1925, or until further order of the Board.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 36170

In the matter of the application of the Canadian National Railway Company for permission to make effective, on three days' notice, a rate of 35½ cents per 100 pounds on wood-pulp, from Chandler, Quebec, to St. Andrews East, Quebec.

File No. 548-36

TUESDAY, the 17th day of March, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that, through clerical error, a rate of 11½ cents per 100 pounds on wood-pulp, in carloads, was published in Supplement No. 64 to the

Canadian National Railways Tariff C.R.C. No. E-475, effective March 16, 1925, whereas the proper rate should be $35\frac{1}{2}$ cents per 100 pounds,—

The Board orders: That a rate of $35\frac{1}{2}$ cents per 100 pounds on wood-pulp, carloads, from Chandler, Quebec, to St. Andrews East, Quebec, may be made effective in a further supplement to the said tariff C.R.C. No. E-475 of the Canadian National Railway Company, upon three days' notice.

H. A. McKEOWN,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 2

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Application of the Town of Pointe Claire, Que., re protection at Valois Avenue crossing of the C.P.R. and C.N.R.

File 9437.323

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of June 27, 1924, the Board was written to by Mr. A. Fortin, attorney for the town of Pointe Claire, Que., said letter covering an application of the Municipal Council of the town dated June 19, 1924, in which it was set out that it was desired to have a direction that the Canadian National Railways and the Canadian Pacific Railway Company provide and install a safety device for the protection of the crossing at both the Canadian National and Canadian Pacific tracks at Valois avenue, within the town of Pointe Claire.

It was set out that Valois avenue is a public highway opened across the tracks of the above-mentioned railways, and that it had been so for a considerable number of years. It was also set out that the Valois avenue crossing of the tracks was the only public one available for a considerable distance, to serve the surrounding country. Reference was made to the increased traffic and to the fact that there had been accidents at the crossings in question.

At the point in question, the two main line tracks of the Canadian Pacific and the Canadian National Railways are located parallel and adjacent to each other, the distance between the two being about 70 feet. Both rights of way at this point form a width of 190 feet on the west side of the crossing and 200 feet on the east side of the crossing, the Canadian Pacific tracks being located on the north and the Canadian National to the south.

As pointed out, there have been accidents. By Order No. 9932, of March 8, 1910, the Grand Trunk Railway Company was relieved of the necessity of establishing further protection for the present. On March 21, 1924, there was an accident on the Canadian National at this point, when a motor truck was struck and the driver thereof was killed. It appears that the whistle was sounded when passing the whistle post west of Valois station, and the engine bell was ringing from a point west of Beaconsfield; the weather conditions were

clear, and no wind was noticeable. Apparently the driver of the truck was attempting to cross ahead of the approaching train. Having in mind the limited view available in connection with eastbound traffic, by Order 35392, of July 26, 1924, the slow order was continued thereon pending final disposition of the matter.

On June 9, 1924, there was an accident at the Canadian Pacific Railway crossing. In this case, a Ford motor truck was struck; the driver, fortunately, received only slight injuries.

Highway travel has been carried over the tracks of the Canadian National and of the Canadian Pacific for a considerable period of time, and a view of the ground shows that the road in question has all the earmarks of a well-travelled highway; but while this condition exists, there is no evidence of any legal sanction for the carrying of the highway over the tracks.

Both the Canadian National and the Canadian Pacific assert their seniority in regard to the crossings in question. If, notwithstanding the seniority of the railways, there was evidence that legal sanction had, after the construction of the railways, been given to the municipality to carry its highway across the track, some weight might have been given to this in connection with questions arising as to distribution of cost. The evidence in regard to the Grand Trunk Railway is that originally the crossing was a farm crossing; and while ample opportunity was afforded Mr. Fortin at the hearing to contest this position, he did not attempt to do so. The following excerpt from the evidence is pertinent in this connection:—

“ASSISTANT CHIEF COMMISSIONER: So there is no question that the Grand Trunk Railway is senior, and there is no formal Act opening the highway across the Grand Trunk Railway.

“Mr. FORTIN: I believe that is correct.”

In regard to the Canadian Pacific, which, as has been indicated, also asserts its seniority, Mr. Fortin stated that his information was that as to the Canadian Pacific the street was opened at the point in question before the Canadian Pacific Railway tracks were built. He stated there was a procès verbal in connection with the opening of the road, and this, he stated, he intended to look for and file with the Board very shortly.

At the close of the hearing, Mr. Fortin undertook to forward to the parties copies of the documents on which he relied. The matter accordingly stood for the filing of these documents. The hearing took place on November 14, 1924. Under date of January 16, 1925, Mr. Fortin, not having been heard from, was written to pointing out that permission had been granted him to make further submissions in regard to the legal status of the crossings involved, copies of such submissions to be furnished to the Canadian Pacific and to the Canadian National at the same time; and he was asked what had been done in the matter. Nothing further has been heard from him.

On the record, I consider that the principle laid down in the *Simplex Avenue Case* applies. *Application of the Town of St. Pierre, Que., complaining of the closing by the Grand Trunk of Simplex avenue in said town; File 14813; Board's Judgments and Orders, July, 1911.*

In this case, the town of St. Pierre had made application to the Board complaining that the Grand Trunk Railway Company intended closing Simplex avenue. On an inspection made by the Board's officers, report was made that the closing of the street would work a hardship to the public, and that protection should also be given. The judgment set out that Simplex avenue was formerly a farm crossing but was now used as a general highway crossing. It was set out that the traffic was very considerable and was likely to be increased. The Board's officers were of the opinion that “this crossing should be made a

regular highway crossing fully protected with gates, with a day and night watchman." The judgment continues:—

"It was strongly urged at the hearing by the representatives of the town, that the railway company should bear part of the cost of protecting this crossing. This, however, is out of line with the practice in the past, not only of the Railway Committee of the Privy Council, but also of the rulings of the Board. All the law required was that the railway company should furnish a farm crossing at this point when the railway was built. Public needs now require that this should be made a public street. The practice always has been that works of this kind must be undertaken and borne by the municipality requiring them."

Reference may also be made in this connection to the *City of London vs. G.T.R. Co. (Ashland Avenue Crossing Case)*, 20 Can. Ry. Cas., 242.

In the case of the Canadian Pacific crossing, ample opportunity has been afforded to substantiate the contention that the town is senior, and nothing having been filed, I conclude that the alleged rights of seniority possessed by the town cannot be proved.

As already pointed out, the road bears all the earmarks of being a well-travelled highway. The town contends it is necessary to have these crossings. The necessity of the highway is not contested by the railway. On the record before us, the crossings have no legal sanction. I am of opinion that what was done in the *Simplex Avenue Case* is applicable here, and that the crossings should be authorized as regular highway crossings.

After the hearing an inspection was made on the ground, and the Board's engineer who accompanied the Commissioners making the inspection reports as follows:—

"Approaching the crossing from the north, the view to the west is fairly good, particularly so at this time of the year when the trees located a short distance west of the crossing are not in foliage. To the east, at a point 150 feet north of the crossing, the view is fairly good; but beyond this point the view becomes obstructed by houses. Approaching the crossing from the south, the view of the Canadian National Railway track to the east is clear to a point 100 feet south of the crossing. Beyond that it is obstructed by houses. To the west, the view is totally obstructed by houses, trees, and the Canadian National station located a short distance west of the crossing. The north approach to the Canadian Pacific Railway tracks is on a 2 per cent grade. The south approach to the Canadian National Railway tracks is on a 10 per cent grade to a point 50 feet south from the crossing, then 2 per cent for another 50 feet and then 1 per cent for 100 feet. This steep approach is one of the elements of danger at this point.

"The crossings serve what will be a large residential district north of the Canadian Pacific Railway on lots 57 and 58. At present, there are quite a number of buildings and several are under construction. The traffic on the highway, as shown on the Canadian Pacific Railway's statement, is fairly heavy. The train movements on both lines is somewhere over fifty per day. Most of this traffic is very fast.

"Under the circumstances, I am of the opinion that the crossing should be protected by bells and wigwags, one located north of the Canadian Pacific Railway main lines and the other located south of the Canadian National Railways' main lines."

In addition to legalizing the crossing, over the Canadian Pacific and over the Canadian National, the protection recommended by the Board's engineer should be installed. Both of these crossings have, on the record before us, existed since prior to 1909. The *Simplex Avenue Case*, which was followed by

the *Park Avenue Case*, *Board's Judgments and Orders*, Vol. IV, p. 296, provided for a contribution from the Grade Crossing Fund. The statutory contribution from the Grade Crossing Fund may be made in aid of the installation at each of these crossings; the balance of installation, as well as the total cost of maintenance in each case, is to be borne by the municipality. Pending the installation of the bells, the crossings should be protected by a watchman, at the expense of the municipality. On account of the proximity of the rights of way, it would not appear necessary to have a separate watchman for the Canadian Pacific and for the Canadian National tracks.

March 24, 1925.

Commissioner Boyce concurred.

Application of the Prince Albert Board of Trade, Prince Albert, Sask., for a ruling as to the provisions of the Railway Act affecting back shipping as against the direct route.

File No. 25019.15

The letter of the applicant Board of Trade asking for the ruling is as follows:—

“I would like a ruling as to the provisions of the Railway Act in so far as they affect back shipping as against the direct route, and how this affects the rates.

“It is claimed by one of our members that they, the railway companies, must back ship if requested to do so as long as he is willing to meet the rates.

“In the case of diversions he claims that as long as he is willing to pay the diversion charges he is entitled to a rate on the mileage basis plus any diversion charges.

“I shall be glad to hear from you as to this at your early convenience.

“An extreme case might be cited as an example. A shipper loads a car of hogs to Winnipeg from Prince Albert; when it arrives at Melville he orders it to be diverted to Regina and from Regina diverted to Saskatoon, then allows it to go to Winnipeg from there. This party claims that as long as he pays the diversion charges he is entitled to a rate based on the mileage; in other words, he claims a through rate plus diversion charges, while the railways maintain it should be rebilled.”

Upon reference to and investigation and report by the Chief Traffic Officer of the Board, the informal ruling of the Board was communicated to the applicant Board of Trade by letter, dated March 26, 1925, reading as follows:—

INFORMAL RULING

“Referring to your letter of the 16th instant and in reply thereto I am directed by the Board to advise you that the tariffs of the railways in Western Canada contain the following regulation covering change of destination of cars in transit:—

‘CHANGE OF DESTINATION OF CARS IN TRANSIT

‘No change of destination of cars in transit will be permitted unless the request covering same is accompanied by the original bill of lading, with proper evidence that diversion is required owing to the consignee’s refusal to accept shipment or error in consigning.

'When change of destination of carload freight in transit is requested under the above circumstances and accomplished, an additional charge of \$3 per car will be charged for such services in addition to the current freight rate in effect from the shipping point to ultimate destination. In the event of a car being hauled out of the direct line of transit from shipping point to ultimate destination, a charge of 1 cent per ton per mile (minimum 20 miles) will be made for such extra haul.

'The company will not, however, assume any responsibility for failure to comply with any request for diversion. The tariff rate applicable to and from the original billed destination will be charged on all carload shipments which reach the original billed destination.

'The original bill of lading must be held until advice of diversion is received. Bill of lading must then be corrected accordingly and surrendered to owner.

'It should be understood that such arrangements as are now legally in effect permitting traffic so specified in the tariffs governing, to be billed, to various points for inspection, milling-in-transit, reconsignment and storage, and which are lawfully on file with the Canadian Railway and Interstate Commerce Commissions are in no way changed by the regulations specified above.

'Cars detained at the convenience of the owner waiting change of destination will be governed by Canadian Car Demurrage Rules, published in tariff of W. J. Collins, Agent, C.R.C. No. 4, I.C.C. No. 2, supplements thereto or subsequent issues.

'Except on shipments of fruit and vegetables, only one change of destination will be allowed. If shipment is consigned to second destination, local rate from the last reconsigning point to destination will be applied.'

"I am further directed to call your attention to the fact that under the foregoing provisions request for change of destination must be made *before* the car reaches its original billed destination, and in regard to the last paragraph of your letter I am directed to call your attention to the last paragraph of the tariff regulation stipulating that if shipment is consigned to a second destination local rate from the last reconsigning point to destination will be applied.

"Yours truly,

"A. D. CARTWRIGHT,

"Secretary, B.R.C."

Application of G. R. Geary, Esq., K.C., Toronto, Ontario, for an Order for rebate of the difference between the actual rate of exchange and par of exchange by the Canadian National Railways, on a shipment from Canadian Shipping Brokers, Limited, London, England, to the Applicant's address at Toronto, Canada.

File No. 29674.45

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner:*

This is an application for an order against the Canadian National Railways for rebate of the difference between the actual rate of exchange and par of exchange, upon the sum of £8 11s. 1d., freight and disbursements paid by the railway company upon a shipment effected by the applicant on the 9th of August, 1924, by through bill of lading from London, England, to Toronto.

This case was heard in Toronto on the 19th day of March, 1925.

On the face of this bill of lading, disbursements and forwarding charges to be paid by the shipper are thus described:—

	£	s.	d.
"Shipper's Disbursements.	4	1	0
"Rail Freight on 2 cwt. 2 qrs. 20 lbs. at 145s. 6d. per ton.	0	19	4
"Ocean Freight on 40 ft. 5 ins. at 70s. per ton..	3	10	9
Total.	8	11	1"

By their bill of lading the Canadian National Railways contracted to carry the freight in question from London to the port of Montreal, and thence to Toronto, and the amounts payable as ocean freight and railway freight are separately set out as above indicated. This through bill of lading on its face is expressed to be "subject to all conditions of ocean bill of lading," and a form of ocean bill of lading is filed with the Board, which latter document contains a clause providing that, if the freight is paid at the port of delivery, it shall be calculated at the rate of \$4.8665 to the pound sterling.

It was at the option of the shipper to pay these charges at the port of shipment, or at the port of delivery, and exercising the latter choice the applicant tendered at Toronto the amount of £8 11s. 1d. at the rate of exchange current at the time of such tender. This amount was refused by the railway company, which insisted upon payment of par exchange, namely \$4.8665, as provided in the bill of lading. The applicant complied with the demand of the railway company under protest. Hence this application for an order for rebate.

It is contended on behalf of the applicant that his contract is wholly with the Canadian National Railways; that he is not bound by any conditions which the railway company subscribed to in the ocean bill of lading; but that he is obligated to pay the sum of £8 11s. 1d., either at London or at the port of delivery; and that in the through bill of lading which constitutes his contract with the railway company, nothing is said about par of exchange.

It will be observed that of the total amount of £8 11s. 1d., freight and charges called for by the bill of lading, the sum of 19s. 4d. only is for railway freight in Canada, and the jurisdiction of this Board over the balance of the account, made up of ocean freight and shipper's disbursements in England, is challenged by the railway company. I think the power of this Board is limited to dealing with the freight charged for carriage from Montreal to Toronto, and all we can investigate on that point is, whether the amount actually charged and paid for that service is in excess of the amount called for under the Canadian tariff applicable thereto.

Now the amount of inland freight payable on the article in question, for carriage from Montreal to Toronto, is based upon an import tariff rate, and according to such tariff the sum payable is \$4.74. This amount is based upon Canadian National Tariff, C.R.C. No. E-781, which makes the charge on this shipment from Montreal wharf to Toronto \$1.58 per 100 pounds, and as the article in question weighed 300 pounds, the charge, under the tariff, from Montreal wharf to Toronto is seen to be \$4.74, the amount collected.

Now as a matter of fact, \$4.74 is equivalent to 19s. 6d., and not 19s. 4d., which is the rail freight set out in the through bill of lading, and the situation therefore is, that the applicant has paid 4 cents more than the bill of lading specifies for this service. But he has paid the correct amount under the existing import tariff rate which, I think, is the only standard of measurement to which this Board can look. To such a slight discrepancy the maxim *de minimus non curat lex* would certainly apply, but even if it were enough to justify further proceedings, I am not prepared to assume jurisdiction for this Board in a matter of that kind.

Under these circumstances, and for the reasons above stated, I think there is no cause for valid complaint against the railway company because of the freight charged and collected for the shipment from Montreal wharf to Toronto. Being of that opinion, it is unnecessary to consider what effect the conditions of the ocean bill of lading as to payment being at the rate of exchange of \$4.8665 has upon the through bill of lading, which the applicant asserts to be his complete contract with the railway company. It may very well be that as far as concerns the shipper's disbursements, which amount to nearly half the account, namely £4 1s., if the applicant had paid that amount in London, it might have been settled for less than he is called upon to pay now, but I do not think the Board has any jurisdiction in that matter.

In my opinion, the application must be refused.

OTTAWA, March 27, 1925.

Assistant Chief Commissioner McLean concurred.

ORDER No. 36195

In the matter of the Application of the Michigan Central Railroad Company and the Niagara River Bridge Company, hereinafter called the "Applicant Companies," under Sections 248 and 276 of the Railway Act, 1919, for authority to use and operate two subways and a bridge over the Niagara River, and to open for the carriage of traffic that portion of their line of railway between Park Street and the International Boundary at Niagara Falls, in the Province of Ontario.

File No. 32038

TUESDAY, the 17th day of March, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders:

1. That the applicant companies be, and they are hereby, authorized to use and operate the subway at Cataract street, the subway at Front street, and the bridge over the Niagara river, at Niagara Falls, in the province of Ontario.

2. That the applicant companies be, and they are hereby, authorized to open for the carriage of traffic the diversion of their line of railway between Park street and the international boundary at Niagara Falls, in the province of Ontario.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36199

In the matter of the application of the Canadian Freight Association for an Order cancelling the rates established under Order No. 26548, dated September 19, 1917, on fibreboard cheese boxes, in carloads.

File No. 19367.9

WEDNESDAY, the 25th day of March, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is alleged in support of the application, and the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Order No. 26548, dated September 19, 1917, be, and it is hereby, rescinded.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36217

In the matter of the application of the Montreal and Southern Counties Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, 1919, for approval of its Standard Freight Mileage Tariff, C.R.C. No. 56, on file with the Board under file No. 28439.3.

SATURDAY, the 28th day of March, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Standard Freight Mileage Tariff of the applicant company, C.R.C. No. 56, on file with the Board under file No. 28439.3, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 414

In the matter of the application of the Canadian Freight Association for an Order amending the General Order of the Board No. 364, dated May 23, 1922, establishing a mileage scale to apply on agricultural limestone, or stone dust, east of Port Arthur, Fort William, and Armstrong, in lieu of the specific commodity rates or mileage scale then in effect.

File No. 26786.6

MONDAY, the 30th day of March, A.D. 1925.

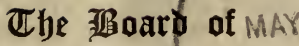
Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is alleged in support of the application,—

The Board orders: That the said General Order No. 364 be, and it is hereby, amended by striking out the mileage scale shown therein, and substituting the following, namely:—

Miles	Rates in cents per 100 pounds
Not over 10..	5
Over 10 not over 20..	5½
Over 20 not over 30..	6
Over 30 not over 40..	6½
Over 40 not over 50..	7
Over 50 not over 60..	7½
Over 60 not over 70..	8
Over 70 not over 80..	8½
Over 80 not over 90..	9
Over 90 not over 100..	9½
Over 100 not over 150..	10
Over 150 not over 200..	10½
Over 200 not over 250..	11
Over 250 not over 300..	12
Over 300 not over 400..	14
Over 400 not over 500..	16
Over 500 not over 600..	18
Over 600 not over 700..	20
Over 700 not over 800..	22
Over 800 not over 900..	24
Over 900 not over 1,000..	26
Over 1,000 not over 1,100..	28
Over 1,100 not over 1,200..	30

H. A. McKEOWN,
Chief Commissioner.



The next step which was referred to was the construction of another bridge about 1879, which was built by the railway. In 1902, the bridge was renewed. Counsel for the railway stated that there were various discussions between the municipality and the railway, but that no agreement between the railway and the municipality, either for the construction or maintenance of the bridge, was arrived at.

In the hearing before the Board in 1909, arising out of an accident at the bridge in question (*Evid., Vol. 86, p. 6886*), a letter was filed from the clerk of the town to the Niagara, St. Catharines and Toronto Railway Company, setting out that there was no written agreement with the Grand Trunk regarding the bridge. The letter continued by saying that in 1902 the railway asked permission to replace the old wooden structure with a steel bridge, setting out that if it was allowed to raise it 12 or 14 inches it would agree to put a footwalk on each side, and put the grade in proper shape. The letter continued by saying that permission was granted on condition that the railway file a plan of the proposed bridge, and a letter covering what is above set out in regard to the footwalk, etc. According to the letter of the clerk, the letter was not filed and the railway began to take down the old bridge. The council took steps to stop the railway; but, finally, the railway was allowed to carry on the work.

The records of the Railway Committee of the Privy Council have been checked to see if there is any information bearing on the status of the structure erected in 1902, but nothing has been found bearing either on this or on the details of the structure.

It was stated by counsel for the railway that, as a result of disputes arising between the municipality and the railway regarding the maintenance of the approaches, some time after 1902—not defined—the Grand Trunk paid the municipality the sum of \$350 towards maintenance; and it was thought this settled the obligation of the railway.

In 1910, steps were taken by the solicitors of the town of Merritton to bring the question of maintenance before the Board. An application was launched in a somewhat informal way, but was not proceeded with.

So far, then, as the record is concerned, there is nothing to show any agreement between the railway and the municipality as to division of cost. On the contrary, it appears that the various structures which have been built, including the existing one, were built at the expense of the railway.

At the hearing in Merritton, counsel for the railway pled that the effect of the structure erected in 1902 was to—

“separate what was for all purposes of railroad and highway traffic a level crossing. It created a grade separation, which gave to the municipality overhead means of travel, and I think I am stating with sufficient detail for all purposes that the vertical clearance then from rail level to the lower part of the structure was about 18 feet 5 inches. I desire, however, to emphasize that what was obtained by that structure was a grade separation.”

In my opinion, the course of action of the railway estops it from taking the position that down to 1902 there was in effect a level crossing, which was done away with by the structure of 1902; and, further, in arguing from this as to what division of cost should be made, the fact that on the record there is a voluntary undertaking of the work by the railway should be given weight. It is true that from the somewhat sketchy record presented in regard to the conditions surrounding the structure of the present bridge, it appears there was some discussion as to participation by the municipality in the maintenance of the approaches. More correctly, perhaps, it should be said that what was involved was what proportion of the maintenance should be borne by the railway, the rest being borne by the municipality; but on what has been presented it would

appear that the question was in some way concerned with the maintenance of the approaches. It does not appear to be necessary to go into this matter.

In 1909, as a result of an accident which took place in connection with train operation under the bridge in question, there was before the Board in hearing the question of requiring that this bridge, and certain other bridges concerned, should have a vertical clearance of 22 feet 6 inches. The late Chief Commissioner Mabee gave the following decision:—

“That leaves only the Merritt Street bridge. There the elevation is only 18 feet 11 inches, considerably below the height called for by the law. Still, there seem to be so many physical difficulties connected with the elevation of it, the resultant damage to adjacent property, brick buildings, churches, hotels and the like, to say nothing of increasing the grade over the bridge and making it a tremendous burden upon traffic, that all these matters in the meantime prevent us dealing with it. The bridge will have to stay and people will have to keep on getting killed there if they get on the top of the cars.” *Evid., Vol. 87, pp. 7883, 7884.*

The history of the structure, so far as available, has been referred to with a view to ascertaining what light, if any, it throws upon the factors concerned with the present application.

The existing bridge has a roadway 27 feet 2½ inches wide for vehicular and street car traffic, with two sidewalks outside the truss each 5 feet wide. The street car tracks of the Niagara, St. Catharines and Toronto Railway Company are not on the centre of the present bridge. The crossing is so effected that on the east side the electric line curves in adjacent to the sidewalk traffic. The result is, as stated by counsel for the railway, that—

“It leaves the portion on the west side extending from the street railway line to the opposite railing for traffic of pedestrians and vehicles. It means this, that with the width of the bridge at the present time, two vehicles cannot pass on that deck; they must wait on the approaches, or they must wait before they proceed to the approaches. In other words, there is only room for a single line of vehicular traffic on that bridge when the street car is there. If the street car is not there, of course they must, and with some loads it is objectionable, take the right of way of the electric line.” *Evid., Vol. 436, p. 9304.*

At page 9305 counsel said that in the existing layout a vehicle crossing the bridge had to cross that electric line; in other words, there was a level crossing between the electric line and the vehicular traffic. This was recognized by the railway as a source of danger, and it is particularly a source of danger because the crossing is on the bridge.

The plan of the proposed bridge shows a strip in the centre for street car traffic only, this strip being 11 feet wide and being separated from the portion of the bridge set aside for vehicular traffic. On each side of this strip, on the proposed plan, there are roadways for vehicular traffic 12 feet 9 inches wide, and outside of these roadways sidewalks 5 feet wide; or, for traffic of all kinds, a roadway of 46 feet 6 inches in width as compared with 37 feet 2½ inches in the present bridge. The present bridge has 27 feet for vehicles and street car traffic, an arrangement which is subject to the inconvenience already pointed out. The proposed bridge has 25 feet 6 inches and two separate roadways for vehicular traffic.

A considerable amount of detail in regard to the vertical clearance was given. It is not necessary to go through this in detail. It is admitted by the railway that the vertical clearance is below standard and requires to be increased, and the words of counsel for the railway in this connection (*Evid., Vol. 436, p. 9305*) are quite sufficient:—

"I am quite frank to say that so far as the railway is concerned it is essential to obtain this increase of vertical clearance."

The standard clearance is 22 feet 6 inches. The railway proposes a clearance of 21 feet 6 inches. This brings up the question of the grades on the proposed structure. In the plan which the railway has filed, there is a clearance of 21 feet 6 inches and a grade on the approaches and bridge of 10 per cent. The existing bridge and approaches has a grade of 8 per cent. The railway desires to have a 10 per cent grade in order to lessen the amount of property damages which would be expected to result from the longer approaches necessary with an 8 per cent grade and the increased clearance.

Strong objection is taken by the town to the increase from the existing grade. At the hearing in 1909, which has already been referred to, Mr. Norman D. Wilson, who gave engineering evidence on behalf of the town of Merrittton, said (*Vol. 87, p 7875*) that 8 per cent, the maximum grade then existing, was "ruinous on teaming, the small amount of the load, and on the horses." The same objection to the increase of 10 per cent was made at the recent hearing by Mr. Rutherford, engineer of the town, who stated there were heavy loads being carried over the road, and that 10 per cent was something to which the municipality absolutely objected.

At the hearing, counsel for the railway company stated that in the case of certain other bridges the Board had approved 10 per cent grades. Opportunity was afforded the counsel to file a statement of the names of the bridges on which reliance was placed in this regard. The two bridges to which the Board is now referred are the St. Paul Street overhead bridge over the line of the Canadian Northern at St. Catharines, and the overhead bridge at Mileage 1.3 near Clifton Junction, on the line of the Canadian National.

These structures, which are relied upon in support of the railway's position in regard to the 10 per cent grade, do not give full support to the contention advanced. In the case of the St. Paul Street bridge at St. Catharines, the grade throughout is less than 10 per cent. The approved plan shows a uniform grade of 8.27 per cent on the east approach. This is an improvement on the old one, which consisted of 12 per cent for 15 feet, 8 per cent for 10 feet, 4 per cent for 16 feet, 7 per cent for 24 feet, and 2.16 per cent for 24 feet. On the west approach, the approved plan shows a uniform grade of 7.3 per cent. The old grade consisted of 6.4 per cent for 14 feet, 6.6 per cent for 24 feet, 7.07 per cent for 30 feet, and 4.16 per cent for 50 feet.

In the case of the overhead bridge near Clifton Junction, there is a grade of 14.2 per cent on the west approach, uniformly from the end of the bridge to the main line of the Michigan Central Niagara-on-the-Lake branch. This grade is, on the average, an improvement on the old grade, which was 15.3 per cent for 40 feet and 10.9 per cent for another 40 feet. The land on each side of the approach is along the right of way of the Michigan Central. The result of this is that the grade on the west approach cannot be further improved owing to the existence of the Michigan Central. On the east approach, the approved plan shows a uniform grade of 10 per cent. It will be noted this is a betterment of grade, for the old situation was that there was a grade of 15.48 per cent for 20 feet, 11.56 per cent for 44 feet, and 5.4 per cent for 86 feet. The former structure had a vertical clearance of 20 feet 6 inches. The plan approved in connection with this new overhead bridge has a clearance of 22 feet 6 inches.

The general argument in regard to cost by the railway was that the whole cost of constructing and reconstructing the original bridge had been borne by the railway, and that it had already paid more than its fair proportion of the cost of providing the facility involved. It was urged that the Board should now deal with the whole question and distribute the whole cost "in line with

its well-established practice." It was urged that in any event it would not be fair to charge on the railway any greater cost than that of renewing the bridge at its original height and width, and that the additional cost to take care of the increasing highway traffic should be placed upon the municipality. It was urged that if the Board adopted the 8 per cent grade, it should also take into consideration that the railway company, in the submission of the plan for which it was asking approval, would, so far as it was concerned, have been satisfied with an improved vertical clearance; but, in addition, it had provided Merritton with a better, safer and more convenient way; that the plan provided for a wider highway and a double line of traffic, and that this, by eliminating a crossing, on the street, of the electric line, gave a better structure.

On consideration of the facts adduced and on the report made by the Board's Engineering Department, I am of opinion that a vertical clearance of 21 feet 6 inches may be sanctioned.

Some question was raised before the Board by the town to the effect that a part of the reduced vertical clearance was due to a lift in the track in recent years, presumably from a lift of ballast being made. In approving a 21 feet 6 inches clearance, the burden is on the railway to maintain this clearance, and not vary therefrom by lessening it as a result of any work on the roadbed. Incident to the approval of the clearance in question is the maintaining of efficient tell-tales.

The question of grade on the bridge and approaches arises from the rearrangement of clearance. This is an obligation arising under the statute and for which the town is in no way responsible. While the allowance of a 10 per cent grade would tend to lessen the property damages, it would be an impairment of the efficiency of the street in respect of the traffic thereon, which on the facts before it the Board would not be justified in allowing.

Under the circumstances, the existing 8 per cent grade should be the maximum.

The Board had before it in the matter of the application of the Corporation of the County of Wellington, Ont., for an order in respect of a bridge across the Canadian Pacific Railway tracks at or near the town of Harriston, in the county of Wellington, Ont., a situation arising out of a proposed increase of grade on the bridge and approaches to offset the damages arising from a lift necessitated by an increase in vertical clearance. In the oral judgment given at the hearing (*Vol. 297, pp. 7838, 7839*), Chief Commissioner Drayton ruled against the increase in grade proposed by the railway. The railway stated that the existing grade on the bridge was but 8.2 per cent on the northwest side and 7.4 per cent on the southwest side. The grade asked for and authorized by the Board was a maximum of 6 per cent. In the course of the judgment, Chief Commissioner Drayton said, "The county is not interested one way or the other in the matter of clearance." He intimated that the question would be further considered from the standpoint of whether a reduction of clearance was justified.

By judgment rendered on August 1, 1919, *Board's Judgments and Orders, Vol. IX*, it was held that the Board would not be justified in departing from the statutory clearance. It was set out that the only reason why the company desired to depart from the statutory clearance is that it would be compelled to pay an exorbitant sum of damages, owing to the necessary land interference; and it was pointed out that in the opinion of the Board there ought not to be any exorbitant award in the present case as the adjacent property was not of high value.

In the present instance, in sanctioning such reduction of clearance as is compatible with safety, the Board has had before it the fact that there is a

developed area adjacent to the bridge. Reasonable provision for safety and reasonable provision for highway traffic must be kept in mind.

The cost of the bridge and approaches necessary thereto must be borne by the railway.

On the bridge itself, the burden is on the railway to supply such sub-structure as will carry such form of paving as the town may desire to place thereon, for the burden of the town in regard to paving on the bridge is the same as on one of its streets. The tracks of the electric railway on the bridge being separate from the roadway used for vehicular purposes and not being available for vehicular purposes, do not require any direction as to maintenance of surfacing or paving.

Where the tracks of the electric railway outside of its separate roadway on the bridge are located upon the approaches, the roadway between said tracks and for 18 inches on each side thereof should be paved by the railway at its own expense, with the same material as the roadway is now paved; and as changes are made from time to time in the paving of the roadway by the municipality, the burden to pave with the same material remains on the electric railway.

Some matters of minor importance were brought up at the hearing which may be gone into now, so that the record will be clear.

At page 9329, counsel for the town of Merrittton said there was a water-pipe crossing the railway track which he understood the railway company admitted it would look after. At page 9329, counsel for the railway undertook that this would be done accordingly.

In the same connection, the point was raised that steps should be put in from the sidewalk on Railroad street direct to the sidewalk on Merritt street, so as to do away with the necessity of a person, going from a point on Railroad street to the north on Merritt street, having first to go south on the latter. The company, at page 9329, promised to take care of this.

At page 9331, the question of having steps from Merritt street down to Birch street was raised; and the company promised to look after this.

In regard to Birch street, the town pointed out that there was no provision for vehicular traffic. The situation here is that there is not at present any provision for vehicular traffic on this street. It appears to me that if this is to be opened for vehicular traffic the expense should be on the municipality.

Subject to the provisions and undertakings above set out, order may go authorizing the railway to construct the bridge, at its own expense, with a maximum grade of 8 per cent on the bridge and approaches, and a vertical clearance of 21 feet 6 inches; the necessary tell-tales to be installed in connection therewith.

April 7, 1925.

Commissioner Boyce concurred.

Re Northwest Grade Separation, Toronto, Bloor Street Subway. Application of Ellen Boland to invalidate the approval of Plan No. C. 829

File No. 32453.2

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner*:

This case was heard in Toronto on the 19th day of March, 1925.

After a hearing held in Toronto in May, 1924, this Board made an order which, *inter alia*, and as far as concerns the case now before us, directed the Canadian National Railway Company to construct a subway under the tracks of its Newmarket Subdivision, on Bloor street, in the city of Toronto, and to

file plans showing such subway for the approval of the Chief Engineer of the Board, within thirty days from the date of the order, which was issued on the 5th day of June, 1924, and in accordance with such order, plans of the subway were approved by the Chief Engineer of the Board and filed on different dates.

On the 16th of October, 1924, the defendant company proceeded to expropriate two parcels of the complainant's land adjoining the subway, by filing in the Registry office of the city of Toronto on the date last mentioned, a plan and description of the lands proposed to be taken. In this, the railway company acted not by order of this Board, nor under the provisions of the Railway Act, but by authority of the Act incorporating the Canadian National Railway Company and the Expropriation Act. The necessity for such expropriation arose from the fact that the access of frontagers to that part of Bloor street affected by the subway is unavoidably interfered with in the construction of this work. Consequently, in order to provide reasonable and proper entrance to the street, the Canadian National Railway Company proceeded as above to expropriate two pieces of land owned by the complainant on the south side of Bloor street and fronting thereon. The first piece of land so expropriated, being a strip 30 feet in width and 242 feet in depth, running southerly from Bloor street, was taken in fee simple for the purpose of giving to the Loblaw Groceries Company access to Bloor street upon the subway. In the other piece of land so expropriated, the railway company assumed to take "a limited right or easement to enter upon and take possession of such land only for the construction of such slopes as may be necessary to conform with the grade on Bloor street as altered." This latter piece of land is a wedge-shaped strip fronting on Bloor street, running westerly from the westerly side line of the other expropriated parcel of land, a distance of 78 feet 10 inches, and having a depth of 7 feet at the easterly end, and of 2 feet at its westerly end.

The right of the railway company to take this step was sharply challenged by Ellen Boland, owner of the property so taken, and under advice of counsel she has raised an action in the Supreme Court of Ontario, asking that the expropriation by the railway company be set aside as illegal and unauthorized. Upon that question the Board has no opinion to express.

The action so commenced in the Supreme Court of the province came to trial lately before Mr. Justice Orde. During the hearing, the railway company offered in evidence as part of its case, the plan filed for the purpose of expropriation, which, it seems, had not then secured the approval of the Chief Engineer of the Railway Board. It was objected to on that account, but the learned judge permitted the plan so tendered to be submitted to the Chief Engineer for approval, and upon being approved by him it was admitted in evidence.

The application to this Board is for the purpose of cancelling such approval, which it is claimed would invalidate the plan and render the expropriation proceedings nugatory. It was strongly urged that the plaintiff in the suit (the complainant herein) was prejudiced by the approval of the Chief Engineer being given subsequent to the commencement of her action, and after all other evidence in the case had been submitted, for she claims that the approval of the plan is a condition precedent to the action of the railway company in taking the land in question. This contention did not impress the learned judge who tried the cause, which is said to be now on appeal from his decision.

In all cases this Board is concerned to exercise the utmost care that any step it may take should not interfere with or affect personal rights which are under litigation. And if action on the part of the Board, or on the part of any of its officials, would seem to have such result, application to rescind the same would be readily entertained. But in the case now before us, there seems to be no ground for such apprehension, for the matter is in this position: The expro-

priation proceedings were admittedly taken before the plan was approved and if such approval be a condition precedent to the commencement of such proceedings then, undoubtedly, all that the railway company has done in the way of taking the land in question is without legal foundation, and the defence thereon must fall to the ground, and no action of the Board invalidating the plan is required in order to entitle her to succeed. On the other hand, if, as was successfully contended in the trial court, the approval of the Board's Chief Engineer was not a condition precedent, but simply an incident to the proceedings the omission of which can be supplied at any time, it is not open to the complainant to ask that the plan be invalidated on that ground.

For this reason I think the application should not be granted on the ground that such approval has prejudiced or injured the complainant in the prosecution of her suit in the civil court.

And as far as concerns what might be termed the merits of the case, wherein it is claimed that the layout is improper and that access to the street within the subway should not be given to any frontager, but that in some manner such entrance should be carried to the level portion of Bloor street, regard must be had to the conditions prevailing.

The subway in question has a length of 786 feet, and at the lowest part thereof it is 17 feet below the elevation of the street. There is a clearance of 14 feet between the lowest steel structure and the travelled portion of the subway. The entrance which is provided by the plans, and complained of in these proceedings, is to the Loblaw business establishment. This entrance is shown as coming into the subway about 100 feet from its western end, and, there being at the point of entrance a drop of about $4\frac{1}{2}$ feet. The street forming such proposed entrance is laid out to a width of 42 feet and comes into the subway from the south side. The total width of the subway is 66 feet, of which 45 feet are available for vehicular traffic, at that point.

It will be readily conceded that wherever practicable subways should be kept free from side entrances, but a glance at the conditions prevailing throughout the city of Toronto and elsewhere makes it apparent that such ideal arrangements cannot always be maintained. Counsel for the complainant, and for the city as well, strongly urged that while it is true that other subways throughout the city carry side entrances similar to the one under consideration, yet the conditions existing at the time such subways were built made it impossible to provide otherwise.

Objection was also made on account of the nature of the vehicles with which the Loblaw Company conveys the product of its factory or warehouse to its various grocery stores throughout the city, complaining that the length of such vehicles would result in a dangerous situation as they come in and out of the proposed side street.

As described by the learned counsel for the complainant, the procedure now followed in that respect seems to present elements of risk, but this, I think, must be taken care of by civic regulations, and, undoubtedly, the question of civil liability on the part of anyone using the streets in a reckless manner will play some part in rectifying an evil of that nature, if any such may exist.

I think each application of this kind must be dealt with having regard to all the circumstances attendant upon the application and the conditions prevailing in the locality. From a personal examination made upon the ground, and from a realization of the manifest objection, especially from a monetary standpoint, to the course urged by the complainant, I do not feel that the approval of the plan in question by the Board's Engineer should be reversed; and for the reasons above indicated I am of the opinion that the application should be dismissed.

OTTAWA, April 7, 1925.

Assistant Chief Commissioner McLean concurred.

Re ERRONEOUS RATE QUOTATIONS

Application of Mr. George B. Hellerman, of Daggett, California, U.S.A., per Messrs. Nolan & Cunnings, Traffic Managers to the American Fruit and Vegetable Trade, Detroit, Mich., for a ruling of the Board in the matter of a claim against the American Railway Express Company on shipments of berries from Waterford, Ont., to Toronto, Ont.

File No. 3079.73

In the applicant's letter of March 12, 1924, which was filed with the Board by his representatives, he states that the rate of 50 cents per 100 pounds was quoted by the agent of the American Railway Express Company at Waterford, Ont., during the shipping season of strawberries and raspberries, 1923; that no mention whatever was made of a 95 cents rate; that he was informed that the rate was 50 cents per 100 pounds via express—the same as the Dominion Express Company rate from Waterford to Toronto; that he had no writing as to the 50 cents rate quoted; that had the 95 cents rate been mentioned by the agent of the American Railway Express Company the shipments would have been sent via the Dominion Express; and he asks that the difference be refunded by the American Railway Express Company.

The matter was taken up by Messrs. Nolan & Cunnings with the auditor of express receipts of the American Railway Express Company, who, in a letter, dated February 6, 1925, informed them that he had advice from the assistant traffic manager which showed that during the period June 18, 1923, to August 31, 1924, the only rate applicable on fruit shipments between Waterford and Toronto was 95 cents per 100 pounds.

This rate has been checked by the Assistant Chief Traffic Officer of the Board, and found to be correct.

INFORMAL RULING

Under date of April 8, 1925, the Board advised Messrs. Nolan & Cunnings that the express company was obliged under the Railway Act to charge and collect the rate legally filed and published, and its employees are not allowed to vary from the rate so legally filed and published in the tariff, and that the Board, therefore, had no power to direct the express company to refund the difference between the rate legally filed and published and the rate which, on the documents filed, was quoted to the applicant by an employee of the express company.

The applicant was further advised that whether or not he would have any redress against the employee of the express company who quoted the erroneous rate was a matter which fell within the scope of a court of competent jurisdiction, and that the Board, therefore, was unable to express any opinion on this phase of the matter.

Note.—The above informal ruling is in consonance with the ruling made by the Board in 1906 in the matter of erroneous rate quotations, file No. 3079, in which it was held that the erroneous quotation of a rate may possibly have been *bona fide*, and it may possibly have been acted upon by the shipper without knowledge of the error, or the whole transaction may have been a device for giving or receiving a lower rate than that in the published tariffs and ordinarily charged to shippers, and that the proper policy of the Board is to recognize only the tariff rates and to leave parties who claim to have shipped under special contracts, or to have been misled by false information, to the courts for relief. This ruling has been followed in similar cases since that date.

OTTAWA, April 16, 1925.

ORDER No. 36259

In the matter of the application of the Canadian National Electric Railways (formerly the Toronto Suburban Railway), hereinafter called the "Applicants," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic its deviated line of railway from the Humber River, in the Township of York, easterly through the Township of York, to the corner of Keele Street and St. Clair Avenue, in the City of Toronto.

File No. 32886.3

WEDNESDAY, the 8th day of April, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of their deviated line of railway from the Humber river, in the township of York, to the corner of Keele street and St. Clair avenue, in the city of Toronto, province of Ontario, a distance of 2.55 miles.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 36277

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of the location of the Applicant Company's proposed special type station at Duck Creek, British Columbia, as shown on the plan dated Vancouver, February 20, 1925, on file with the Board under file No. 28780.37.

FRIDAY, the 17th day of April, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Chief Operating Officer, the Department of Public Works of the province of British Columbia offering no objection, although duly notified as appears by proof of service of notice of the application, filed,—

The Board orders: That the location of the applicant company's proposed special type of station at Duck Creek, in the province of British Columbia, as shown on the said plan on file with the Board under file No. 28780.37, be, and it is hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36282

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for authority to replace the A-2 station building with a standard portable station at Jaffray, British Columbia, as shown on the plan dated Vancouver, February 19, 1925, on file with the Board under file No. 19642.

FRIDAY, the 17th day of April, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Chief Operating Officer, the Department of Public Works of the province of British Columbia offering no objection, although duly notified as appears by proof of service of notice of the application, filed,—

The Board orders: That the applicant company be, and it is hereby, authorized to replace its A-2 station building at Jaffray, in the province of British Columbia, with a standard portable station, as shown on the said plan on file with the Board under file No. 19642.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36296

In the matter of the complaint of the Canadian Freight Bureau, Toronto, Ontario, complaining against an overcharge by the Canadian National Railway Company on a shipment of oil by the Sun Oil Company from Marcus Hook, Pennsylvania, to McColl Bros., Limited, Toronto, Ontario, on August 28, 1923.

File No. 26963.70

WEDNESDAY, the 22nd day of April, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed in support of the complaint and on behalf of the Canadian National Railway Company and the report of its Chief Traffic Officer, its appearing that Toronto is an intermediate station to Gananoque shown in the tariff under which the traffic moved, the rates under said tariff not being specifically indicated as competitive,—

The Board declares:—That the legal rate applicable on the shipment in question should be the fifth-class rate of 41 cents per 100 pounds, to Gananoque; said rate applying as the maximum to Toronto.

H. A. McKEOWN,
Chief Commissioner.

CHAPTER II

In the course of the investigation, the following facts were ascertained:—

1. That the vessel was built at the place of origin, and was at the time of the capture, in the possession of the owner.

2. That the vessel was at the time of the capture, in the possession of the owner.

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CHAPTER III

The vessel was at the time of the capture, in the possession of the owner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XV

Ottawa, May 15, 1925

No. 4

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the Chief Accountant, Department of Public Printing and Stationery, Ottawa. Remittances to be made payable to the order of the Chief Accountant. P.O. Money or Postal Orders preferred. Cheques or drafts must be made payable at par at Ottawa. Postage Stamps will not be accepted.

Application of the Mount Royal Milling and Manufacturing Company, Limited, of Montreal, for an Order directing that the railway companies establish rates on Cleaned Rice, shipped from Montreal, to points in Ontario (Port Arthur and west), Manitoba, Saskatchewan, Alberta and British Columbia, on a basis not higher than rates charged on Rice shipped from Vancouver, B.C., to similar points in the Prairie Provinces, Ontario and Quebec.

File No. 27027-2

REPORT OF CHIEF TRAFFIC OFFICER

JANUARY 26, 1925.

THIS REPORT IS ISSUING AS THE
JUDGMENT
OF THE BOARD IN THIS MATTER

This matter originated with the Mount Royal Milling and Manufacturing Company, Limited, Montreal, Que., who, in a communication to the Board under date of October 20, 1923, made reference to a special commodity blanket rate of 75 cents per 100 pounds applicable on cleaned rice, in carloads, from Vancouver to practically all points of importance in the Prairie Provinces, Ontario and Quebec, and it was alleged that this rate resulted in a direct discrimination against Montreal. They asked that this discrimination be removed.

Answer was made by the Canadian National and Canadian Pacific Railways, in which it was stated that the question of rice rates from Montreal to the prairies v. rates from Vancouver had been the subject of negotiations between the railways and the Mount Royal Milling Company for some time past. It was admitted the current rate adjustment was such as to give the Vancouver millers a decided advantage in the prairie markets. It was alleged the situation in regard to rice had undergone a change since the original establishment of the 75-cent rate from the Pacific coast through to Montreal, and the difficulty was to arrive at an adjustment that would be fair to all interests concerned. It was suggested that a readjustment be made somewhat along the lines prescribed by the Board in the Vancouver sugar case, vol. 8, p. 347, of the Board's Printed Judgments, Orders and Rulings. The Mount Royal Milling Company

advised that a readjustment of the rates such as suggested by the railway companies would not be unacceptable to them, stating they were desirous of obtaining equal treatment with their competitors and nothing more.

The matter stood for a time to see if the parties could reach an agreement. Subsequently, the Mount Royal Milling Company advised there seemed no prospect of agreement and asked that the matter be set down for hearing, consequently it was listed for hearing at the sittings of the Board at Ottawa on May 20, 1924. In the meantime, communications were received from the Imperial Grain and Milling Company and Messrs. Martin and Robertson, Limited, Vancouver, expressing the opinion that the rates from Vancouver were high enough and should not be disturbed. There was also a letter dated April 17 from Mr. E. V. Ablett, manager of the freight traffic bureau of the Associated Boards of Trade of British Columbia, setting out their views in the matter.

At the Ottawa hearing on May 20 the Mount Royal Milling Company specifically set out their position as an application for rates on cleaned rice shipped from Montreal to points in western Ontario, Manitoba, Saskatchewan and British Columbia, on a basis not higher than rates charged on rice shipped from Vancouver, B.C., to similar points in the Prairie Provinces, Ontario and Quebec. The principal points stressed by the Mount Royal Milling Company may be summarized as follows:—

Rice is milled from its raw or uncleaned condition into cleaned rice at only two points in Canada, viz., Montreal and Vancouver. Both secure their major supplies in Oriental markets and they compete in the markets of Canada. They are also in competition with rice imported from American mills in Texas, Louisiana and Arkansas. The Montreal miller contended there should be no arbitrary, unreasonable or discriminatory condition imposed upon him, as is alleged does result from a rate adjustment under which the mill at Vancouver can ship rice at a special commodity rate of 75 cents to destinations in the territory extending from Calgary to Montreal, whereas from Montreal the 5th class rates apply, which makes the rate to Winnipeg \$1.14, to Calgary \$2, and to Vancouver \$2.42. It was pointed out that the haul from Vancouver involves a greater mileage to Winnipeg than does the haul from Montreal, and that the costs of operation through the mountains have been placed higher than on the prairies; therefore, any difference in rates should be in favour of the shipper at Montreal and not from Vancouver. The Montreal miller asks that he be placed on a rate equality in the markets of the Prairie Provinces so that neither Vancouver nor Montreal by discriminatory rates should have any advantage over the other. The Montreal miller did not contend that he must have a 75-cent rate from Montreal westbound except in the event that that rate was to be continued eastbound; he stated that he was agreeable to any reasonable rate westbound provided his competitors in Vancouver paid the same rate eastbound for a similar service.

According to the submissions of the Montreal miller, he is at a considerable disadvantage as compared with Vancouver with respect to the cost of transportation of the raw material to his mill, and this largely offsets the lower freight rates on cleaned rice from Montreal, as compared with Vancouver, to points in Ontario. The Vancouver miller can obtain uncleaned rice by water all year round, whereas the Montreal miller must bring it in before the close of navigation, with additional risks of marketing and cost of carrying, as well as insurance, interest charges and possible deterioration, or, as an alternative, pay the rail rate from the seaboard in addition to the water rate during the winter months.

It is apparent from the record that there are numerous qualities and grades of rice originating at different points and that a computation based on the handling of one particular grade of rice might produce an entirely different result

with respect to another grade, all of which has its effect on the ability to market in certain consuming territory. On this point Mr. Ross, representing the Mount Royal Milling Company, stated, at p. 3699:—

“There are some grades on which we can compete in Calgary, and there are other grades of rice on which they (Vancouver) can compete with us in Ottawa.”

The rate adjustment suggested by the railway companies was to revise the rates from Vancouver to Winnipeg and points west thereof to the basis of the class rates, with the combination available at Winnipeg as maximum; that is to say, the rate from Vancouver to United States boundary points, such as Northgate, Neche and Noyes, is 90 cents, minimum 40,000 pounds, and 83 cents, minimum 60,000 pounds, the rate from Noyes to Winnipeg being 26 cents, making a combination through rate of \$1.09, minimum 60,000 pounds, and \$1.16, minimum 40,000 pounds. To Canadian destinations in Eastern Canada the combinations available via Chicago were suggested as a basis. The present rate and suggested figures to some of the more important points are later shown herein. With regard to the rates from Montreal, the railways suggested establishment to Winnipeg of the same rate as suggested from Vancouver, viz., \$1.09, minimum 60,000 pounds, and to points west of Winnipeg they proposed the same reduction from the class rates applicable thereto as proposed at Winnipeg, viz., 5 cents per 100 pounds.

The Vancouver firms already referred to herein applied to the Board for a hearing in Vancouver on the matter of revision of the rates on cleaned rice before the Board rendered a decision on the application of the Mount Royal Milling Company, and the application of the last-named company was therefore listed for the sittings of the Board in Vancouver on June 23, in order to afford the Vancouver millers whose interests might be affected an opportunity of presenting their views. Copies of the brief filed by the Mount Royal Milling Company at the Ottawa hearing had been furnished the Vancouver firms and the Vancouver Board of Trade. Briefly, the Vancouver millers took the position that with regard to the 75-cent rate eastbound, inasmuch as they were members of the Vancouver Board of Trade, who had applied for and urged equalization of rates, they could not consistently justify objection to the Mount Royal people being granted the same rate westbound as they enjoyed eastbound, and they were therefore agreeable to the same blanket rate adjustment west as east. On the question of increasing the rate from Vancouver, the Vancouver millers contended that the application of the Montreal miller was merely for an equalization of rate based on the present eastbound rate, which they conceded, but had not come prepared to argue the question of an increase in the Vancouver rate. It would not seem that such construction of the Mount Royal Milling Company's application was warranted, because the question of a revision of the Vancouver rate was referred to in their brief, and it was certainly referred to in the official report of the hearing at Ottawa, the railways having outlined therein the revised rates they were suggesting, and Mr. Mason, at p. 4575, referred to having looked over the evidence of the hearing at Ottawa. They frankly stated they were not very much concerned about the competition of the Montreal miller because it was largely the American millers that they were afraid of and who created their severest competition. They stated that when they had negotiated with the railways and obtained the special rate of 75 cents eastbound it was as against the American competition, which they met all through the prairies and in Ontario. At p. 4576 Mr. Gavin stated:—

“We did not have the competition of the Mount Royal very much in view. In my opinion, we had the competition of the American mills. That is the chief factor. We are quite willing to take our chances with the Mount Royal mill but the serious point with us is the American competition.”

Again, at p. 4577, there appears the following question of the Assistant Chief Commissioner and reply made by Mr. Gavin:—

“Q. Your position, then, is this, that the key of the situation is the competition of the American mills?”

“A. That is, from our point of view, that is the serious matter with us; we are not so much concerned with the others; we think they are quite entitled to the same treatment as we are. It is the American mills we are afraid of.”

The railways admitted that the 75-cent rate from Vancouver was established to enable the Vancouver mills to get into the eastern markets in competition with rice from the Southern States, but claimed that the situation had since changed. Their position was that the 75-cent rate was put in to meet a special commercial market competition, as existing in 1922; consequently, it being by common admission a competitive rate and made for a specific purpose, and the conditions having since changed, it was open to the railways to withdraw or increase the rate. The representatives of the railways suggested that the interested parties, i.e., the Montreal and Vancouver millers and the railway companies, should have a conference and see if some settlement satisfactory to all parties could be reached. The following remarks of the Assistant Chief Commissioner at the end of the hearing at this time shows how it was left:—

“A reference has been made to the question of having a conference. The shippers’ representatives are here, and the railway company’s representatives are here, and the Board never objects to conferences taking place between the parties interested. So there appears to be an opportunity for conferring. We are not expressing any opinion as to what the line of conference should be. That is a question for the parties themselves.”

On August 20 the Canadian National and Canadian Pacific railways wrote a joint letter to the Board, reading as follows:—

“This question was discussed before the Board at hearings in Vancouver, B.C., on June 23, at which time it was arranged for the railways and the Rice interests to get together with the view of seeing if it would not be possible to agree on a satisfactory basis on which to dispose of the matter.

“As advised the Assistant Chief Commissioner, Dr. McLean, we were not successful in arriving at a satisfactory basis of settlement at the conference in Vancouver, and as stated at that time, the next move would be to publish what was considered a fair basis. Publication of the revised basis has been somewhat delayed due to further efforts to reach a satisfactory settlement but this does not seem possible.

“The railways will, therefore, now proceed to publish revised rates from Vancouver on basis of the combination rates as outlined in the evidence before the Board in Ottawa on May 20 last. No commodity rates will be published westbound from Montreal to the prairies as it does not seem possible for the railways to meet the views of the Mount Royal Milling Company as to what the rates from Montreal should be in view of the increased rates which are being published from Vancouver.

“Supplements to tariffs providing for the revised rates from Vancouver are now being prepared in Winnipeg and will be filed with the Board in due course at which time copies will also be furnished to the Rice milling interests in both Vancouver and Montreal.”

Tariff schedules giving effect to the foregoing were filed to become effective on October 1. The present rate and the proposed figures to some of the more important and typical points from Vancouver, are shown below.

To	Present Rate. (In cents per 100 lbs.)	Suggested Rate.
Calgary, Alta..	75	98
Edmonton, Alta..	75	98
Regina, Sask..	75	109
Saskatoon, Sask..	75	109
Brandon, Man..	75	109
Winnipeg, Man..	75	109
Windsor, Ont..	75	108
London, Ont..	75	109½
Hamilton, Ont..	75	110
Toronto, Ont..	75	112
East of Toronto to, and including, Montreal, Que.. . .	75	115½

Thereafter, and prior to the effective date of the proposed tariff schedules, complaints were received by the Board in regard thereto. The Winnipeg Board of Trade requested an opportunity of being heard before any change in rate was allowed. The Mount Royal Milling Company, in a letter dated September 9, stated:—

“The proposed adjustment is discriminatory and unjust, and not at all satisfactory to us.”

The Vancouver milling firms claimed the proposed rates would divert business to American mills and applied for suspension of the increased rates until they had been given opportunity to submit their case to the Board.

The Edmonton Board of Trade stated they “would like to be informed of any reasons that led the Board to approve the tariffs recently filed with them.”

It would appear the Edmonton Board of Trade overlooked the fact that the only freight tariffs that require to be, or are, specifically approved by the Board, are standard freight tariffs of maximum tolls. Special rates lower than the standard rates may, under the provisions of the Railway Act, be varied on notice, there being a requirement that in the case of increases in such rates there shall be given thirty days' notice. The provisions herein briefly referred to are covered by sections 330 and 331 of the Railway Act.

The Vancouver Board of Trade endorsed the request of the Vancouver rice millers for suspension. Mr. A. Chard, Freight and Traffic Supervisor, Department of Railways, province of Alberta, applied for suspension and an opportunity of a hearing. Mr. A. E. Burns, Secretary, Prairie Provinces Wholesale Grocers' Association, Winnipeg, submitted a petition signed by a number of wholesale grocers and wholesale grocery brokers of Winnipeg, protesting against any increase in the rate from Vancouver to Winnipeg, and asking that it be disallowed. By Order No. 35608, dated October 1, 1924, and amending Order No. 35645, dated October 9, the Board suspended the proposed changes in rates on rice as contained in the various tariff schedules therein enumerated pending hearing, and the matter was listed to be heard at the sittings of the Board in Edmonton on October 29, Vancouver, November 5, and Winnipeg on November 20.

So many features were referred to in the various submissions and at these different hearings that it would be difficult to comment on all of them. It may be stated, however, that the various briefs and official notes of evidence have all been gone over and carefully considered.

At the sittings in Edmonton on October 29, Mr. Chard objected to any increase in the rate from Vancouver to Alberta points, and his submission was, in part at any rate, on behalf of the consumers of Alberta. The present rate to Edmonton is 75 cents per 100 pounds, or $\frac{3}{4}$ cents per pound, and the pro-

posal of the railways was to increase it 23/100th of 1 cent per pound, or to 98 cents per 100 pounds. The total burden of rate under this proposal would be 98/100, or slightly less than 1 cent per pound. Mr. Chard argued that the result of an increase of less than $\frac{1}{4}$ cent per pound would very likely increase the price to the consumer to the extent of $2\frac{1}{2}$ cents per pound; or in other words, the increase in the price of a pound of rice to the consumer, according to Mr. Chard's submission, would be more than ten times the amount of the increase in the freight rate, and two and a half times the total burden of the freight rate. This is a very interesting, as well as startling statement, and it is unfortunate that Mr. Chard did not develop it sufficiently to show clearly why such an incomprehensible result would follow. The Board has had reason to believe, from data in its possession, that the benefit of reductions in freight rates is not, at times, passed on to the consumers, but it is indeed surprising to have it asserted that such a slight increase in freight rate reacts to the detriment of the consumer to the extent alleged by Mr. Chard. Mr. Chard also stated, at p. 7312, that he had no objection to the railways raising the rate east of Alberta, and at p. 7319 stated: "I have no quarrel with the \$1.09 rate to Winnipeg." The proposed increase was greater to Winnipeg than to Edmonton, and obviously Mr. Chard was not holding a brief for the consumers east of Alberta.

Mr. Chard stated that so far as the 75 cents rate from Vancouver to Montreal was concerned, he considered it was too low and an unfair rate to the rest of the country. He considered a special commodity rate was warranted from Vancouver as far east as Winnipeg and the head of lakes, in order to meet foreign competition from the United States. He pointed out, however, that the rate adjustment proposed by the railway companies under the suspended schedule provided to destination points in Saskatchewan and Manitoba rates appreciably below the normal 5th class rates, the reductions ranging from 29 to 63 cents, whereas, he alleged, only two Alberta points obtained any reduction, viz., Lethbridge, 3 cents and Medicine Hat, 7 cents. He contended this was unfair to Alberta. If rates unaffected by competitive market conditions were under consideration, Mr. Chard's argument would be very pertinent. However, Mr. Chard having admitted that to Winnipeg a competitive rate to meet United States competition is justified, obviously the rate fixed to Winnipeg has to be set at the figure which is felt necessary to meet the case and enable the Vancouver miller to do business there. The rate to Winnipeg being thus fixed, it then applies as maximum to intermediate points west until it meets the normal class rate. Obviously, the greatest competition is at Winnipeg from Southern United States, and it is to this point that the lowest rate is necessary. This competition, from a rate standpoint, rapidly decreases west of Winnipeg, consequently except for applying the Winnipeg rate as maximum there is not a comparable competitive situation necessitating the establishment of less than normal rates to many destinations west of Winnipeg. This is made apparent by the comparative statement of rates from Vancouver, Montreal and New Orleans later shown herein. There is no evidence of any price moving from the United States into Edmonton, and in fact the total importations of United States rice into Alberta for the fiscal year ending March 31, 1924, was 200,090 pounds. Alberta, cannot, therefore, properly demand less than normal rates when the same market competition does not exist, and would require to make out a case for reduced rates by the submission of evidence of the unreasonableness *per se* of the rates charged from Vancouver to Alberta destinations. No such evidence was submitted. Under these circumstances, Mr. Chard's Exhibit No. 2, showing rates computed to Alberta destinations based on the same percentage reduction from the class rates as exist in the case of the special competitive rate to Winnipeg, is of the same effect as a comparison between a normal rate and a competitive rate. Alberta would only be entitled to the same per-

centage reduction on a showing that the conditions were the same as existing at Winnipeg. This point is later dealt with herein in connection with the Vancouver Millers' comparisons of rates.

Mr. Chard also argued that under the proposed rates the railway company would likely obtain loading of 24,000 pounds per car as against 60,000 pounds under the present rate, "with the result that two and one half cars will be wheeled over the same mileage with a total earnings of \$615 as against \$450 earnings for one movement of 60,000 pounds minimum" (p. 7307). The force of this statement would largely depend upon the empty car movement eastbound from Vancouver. The Canadian Pacific Railway submitted a statement to the Board at Vancouver showing that during the year 1923, 5,950 empty cars were handled eastbound from the British Columbia district. Similar figures were not filed by the Canadian National Railways. The matter was not sufficiently developed on the record to enable any conclusion to be formed on this point.

At the Vancouver hearing the Vancouver millers amplified in considerable detail their previous submissions. They again claimed that the proposed rates on rice eastbound would divert the rice business of the Middle West or Prairie Provinces from Canadian to Southern United States millers, and be of no advantage or assistance to the Montreal millers. They contended that the 75 cent rate on rice eastbound is a profitable one to the railways, in support of which they quoted rates applying eastbound on beans, tapioca, sago and wood-pulp. Their illustrations draw attention to the very low rates that have been established by the railway companies, not only on the commodities named, but on numerous others, important to the province of British Columbia, moving eastbound in large volume and which enable that province to get into its far distant Eastern Canadian markets under very low rates. All these rates are influenced or controlled by various competitive conditions, such as to meet rail competition, water competition, and to enable shippers to meet market competition; consequently, such special rates very much below the normal basis cannot properly be taken as a yardstick by which to measure the reasonableness, or profitableness to the railway companies, of rates *per se*. If they could, then all the numerous higher normal rates in effect on commodities similarly classified could be immediately condemned. The comparison made, if sound as an argument as to the rate being profitable to the railway companies, would be a strong argument for the shipper of sago and tapioca in support of a reduction in the rates on those commodities from \$1.10 to the 75 cent rate in effect on rice. So far as the beans are concerned, there is no competition between beans and rice, and the former shipped in bags or barrels classify 8th class in the Canadian Freight Classification, while rice is 5th class. It might as logically be argued that because the rice rate is the same to Calgary as it is to Montreal the Calgary rate is entirely unreasonable, in that it involves as high a rate for a haul of 642 miles as is charged for a haul of 2,882 miles, but the Vancouver interests are not complaining of the rate to Calgary. The Railway Act contains specific provisions authorizing a reduced charge on traffic handled to meet competitive conditions without necessitating corresponding reduction in normal rates, and it has been held in numerous decisions of the Board that comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates *per se*. It being a well established principle, therefore, that a railway may publish a reduced toll on competitive movements which is lower than charged for the carriage for lesser distances along the same line to intermediate points, then obviously a comparison between two competitive rates which are different, because influenced by different conditions, does not, in itself, provide any real evidence of the reasonableness *per se* of either of the competitive rates in question. Before it could be successfully proven that the rice rate was profitable merely by making comparison with the rates on these other commodities it would first be necessary to produce evidence in proof of the assump-

tion or allegation that the rates on these other commodities were in themselves profitable. This was not done.

The Vancouver millers further supported this contention by quoting rates over American railways for carrying rice of 90 cents from San Francisco to New York, and 83 cents from Portland and Seattle to Chicago. They argued that the American railways undoubtedly find it profitable to keep these rates in effect, but no evidence was submitted showing whether or not these rates are also controlled by competitive conditions, and the evidence put in relating to these rates was not sufficiently developed to enable any weight being given thereto. As regards comparisons between United States and Canadian rates, the Board has stated: "Tolls fixed in the United States are not the criteria of reasonable tolls in Canada." (*Manitoba Dairymen's Association v. Dominion Express Company*, 14 C.R.C. 142; *Riley v. Dominion Express Company*, 7 C.R.C. 112.)

Mr. Mason referred to the figures covering importations of rice into the province of Quebec for the fiscal year ending March 31, 1923, as follows:—

Country from which imported.	Rice uncleaned, un- hulled or Paddy. (pounds)	Rice, cleaned. (pounds)
United Kingdom.. . . .	....	233,778
British Guiana.. . . .	....	40,000
British India.. . . .	1,567,720	1,201,588
Hong Kong.. . . .	....	61,365
China.. . . .	100,000	....
France.. . . .	....	604
Germany.. . . .	....	5,000
Italy.. . . .	....	32,681
Mexico.. . . .	81,422	....
Netherlands.. . . .	....	166,000
Siam.. . . .	....	20,600
United States.. . . .	436,750	2,738,278
	<hr/> 2,185,892	<hr/> 4,499,894

Total.—White and Brown, 6,685,786 lbs.—3,343 tons.

He stated: "You will note, that the province of Quebec imported altogether in both milled and brown, or unmilled, rice, from all countries, during 1923, 3,343 tons; from the United States only 218 tons of brown, or unmilled, and 1,369 tons of white, or milled, rice, or a total of 1,587 tons, or almost one-half of the total imports were American rice, and out of this amount more than two-thirds was milled by American millers." The statement that "almost one-half of the imports were American rice and out of this amount more than two-thirds was milled by American millers" might easily be misunderstood. The total importation of cleaned rice was 2,249 tons, that from the United States being 1,369 tons, or 60 per cent. But this does not mean that 60 per cent of the cleaned rice consumed in the province of Quebec during the period referred to was milled by American millers. A certain percentage of the 1,092 tons of uncleaned rice imported into the province was milled and consumed there, in addition to which the foregoing figures do not indicate how much of the 15,342 tons of uncleaned rice imported into the province of British Columbia in the same year was in turn shipped in its cleaned condition by the Vancouver millers into the province of Quebec. The Vancouver millers asserted they did a large volume of business in the East, but failed to submit any tonnage figures to the Board on this very important point. About the only reference is to be found on p. 8057, where, in reply to Mr. Lanigan, Mr. Mason stated the eastern market consumes about two-thirds of their product. Mr. Mason's references to the Ontario figures also left out of consideration, when stressing the percentage of United States importations, the same factors as above referred to.

At p. 8057 Mr. Mason stated:—

“The Mount Royal Milling Company evidently feel that Ontario is a territory which should really belong to them, and in their evidence they claim that in the Toronto market they have been prevented from doing business at a profit for a considerable time owing to competition from Southern and British Columbia millers, the latter by reason of the 75-cent rate were able to undersell them. The statistics furnished in their own table entirely disprove this and show conclusively that the competition from which they suffer is from Southern mills rather than from British Columbia.”

The statements filed by Mr. Mason show British Columbia importations of uncleaned rice to be as follows:—

Fiscal year ending March 31, 1923—30,684,929 lbs.

Fiscal year ending March 31, 1924—31,530,666 lbs.

At p. 8061 Mr. Mason stated that there is a loss in offal of over 20 per cent, and at p. 8075 he advised that about two-thirds of their product moves to the eastern market. It is not developed whether this means east of the Prairie Provinces or includes all of the territory east of British Columbia. Deducting from the importations as above given 20 per cent for offal, and taking two-thirds of the balance as representing shipments east into the Prairie Provinces, Ontario and Quebec, it would give as the approximate volume of rice shipped east by the Vancouver millers, 16,000,000 pounds in 1923, and 16,800,000 pounds in 1924. The importations of cleaned rice from the United States into Quebec, Ontario, Manitoba, Saskatchewan and Alberta during these years were—

1923—10,404,655 lbs.

1924— 7,482,392 lbs.

The foregoing figures do not appear to bear out Mr. Mason's statement that “the statistics furnished . . . show conclusively that the competition from which they (Mount Royal Milling Company) suffer is from southern mills rather than from British Columbia.”

Taking the territory of the whole of Canada, Quebec and west, for the fiscal year ending March 31, 1924, the importations of uncleaned rice amounted to 56,294,783 pounds; deducting 20 per cent for offal gives 45,035,827 pounds. The importations of cleaned rice amounted to 16,190,674 pounds, or a total of 61,226,501 pounds, and in comparison with the latter figure it is noted the importations of cleaned rice from the United States amounted to 7,611,271 pounds, or approximately 11 per cent of the total. The importations of cleaned rice from the United States for this period represented a decrease of 27 per cent from the importation from the United States for the corresponding period of 1923.

In rebuttal of the allegation of the Vancouver millers that the real competition of the Montreal miller was the American miller rather than British Columbia, the following exhibits were filed by Mr. Ross. The figures contained in these exhibits are to be found in the exhibits filed in different form by Mr. Mason at the November hearing in Vancouver.

TOTAL IMPORTS OF UNCLEANED AND CLEANED RICE INTO CANADA FOR FISCAL YEARS 1923 AND 1924 COMPARED WITH IMPORTS INTO BRITISH COLUMBIA FOR SAME PERIOD.

	Uncleaned.	Cleaned.
1923..	32,874,729 lbs.	22,110,838 lbs.
1924..	56,299,605 lbs.	16,523,234 lbs.
	<hr/>	<hr/>
	89,174,334 lbs.	38,634,072 lbs.

Total imports, 127,808,406 lbs., or say 63,904 tons.

IMPORTS INTO BRITISH COLUMBIA FOR SAME PERIOD

	Uncleaned.	Cleaned.
1923..	30,684,929 lbs.	8,647,682 lbs.
1924..	31,530,666 lbs.	7,493,368 lbs.
	<hr/>	<hr/>
	62,215,595 lbs.	16,141,050 lbs.

Total British Columbia imports, 78,356,645 lbs., or say 39,178 tons.

SUMMARY

Total tonnage for Canada..	63,904 tons
Tonnage for British Columbia alone..	39,178 tons

Total tonnage for all of rest of Canada..	24,726 tons
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So that British Columbia milled and imported rice to the extent of more than one and one-half times the importations of the whole of the rest of Canada.

IMPORTATIONS OF UNCLEANED AND CLEANED RICE INTO BRITISH COLUMBIA AS COMPARED WITH THE COMBINED IMPORTATIONS OF THE TWO PROVINCES OF ONTARIO AND QUEBEC, FOR FISCAL YEARS 1923 AND 1924.

BRITISH COLUMBIA

	Uncleaned.	Cleaned.
1923..	30,684,929 lbs.	8,647,682 lbs.
1924..	31,530,666 lbs.	7,493,368 lbs.
	<hr/>	<hr/>
	62,215,595 lbs.	16,141,050 lbs.
	or	
	31,108 tons.	8,070 tons

ONTARIO AND QUEBEC, COMBINED

1923—		
Ontario..	468 lbs.	6,045,367 lbs.
Quebec..	2,185,892 lbs.	4,499,894 lbs.
	<hr/>	<hr/>
1924—		
Ontario..	1,079 lbs.	4,850,614 lbs.
Quebec..	24,763,038 lbs.	1,290,184 lbs.
	<hr/>	<hr/>
	26,950,477 lbs.	16,686,059 lbs.
	or	
	13,475 tons.	8,343 tons.

SUMMARY

So that British Columbia milled over two and one-quarter times as much raw or uncleaned rice as Quebec—and imported nearly as much cleaned rice as the combined cleaned rice importations of Ontario and Quebec.

The Associated Boards of Trade of British Columbia did not make any oral submissions at the Vancouver hearing, but in their written submission already alluded to herein the following appears:—

“We beg to state that the Vancouver rate of 75 cents is in no way a discriminating rate, in fact, the discrimination is the other way. One only

has to refer to Mr. Ross' chart to prove this point. Mr. Ross compares class rates having minima of 12 tons with a commodity rate having minima of 30 tons. We would point out that Vancouver shippers, when shipping in 12-ton lots, have to pay the following rates:—

Regina..	\$1.41
Brandon..	1.58
Winnipeg..	1.71
Fort William..	1.85

A similar comparison was made by the Imperial Grain and Milling Company as between the rate from Montreal, based on 24,000 pounds minimum, and the rates from Vancouver, based on 30,000 pounds minimum. The rates quoted from Montreal are those charged regardless of whether 24,000 or 60,000 pounds are shipped, while the higher rates from Vancouver, above quoted, would only apply when a shipment weighing less than 26,316 pounds was made, because the commodity rate of 75 cents, minimum 60,000 pounds, would be cheaper on any shipment weighing over this amount. Further, the above rates from Vancouver, according to the record, are simply paper rates, as Mr. Mason, in his written submission of December 30, says, with regard to the 60,000 pounds minimum and 75 cents rate: "This is the load and rate we are paying"; and the whole evidence warrants the assumption that the rice is not moving east-bound from Vancouver to the Prairies or east thereof at any higher rate. Under these circumstances, the above submission is of no real value as supporting the allegation that no discrimination exists as against Montreal.

At the Winnipeg hearing on November 20 very little that was new was added to the record. Mr. Hamilton, appearing for the Board of Trade and the wholesale grocers of Winnipeg, stated at the outset that they objected to any increase or change in the present rate, although later he modified this position, stating, at p. 8375:—

"I have just one observation to make, Mr. Chairman. Mr. Stephen, in the figures he has quoted to you, shows a difference in the price of rice over two periods. The rate was 90 cents to Winnipeg when the change was made; they now want to return to conditions at that time, and put in a rate of \$1.09.

"From my knowledge of the desires of the Winnipeg jobbers, perhaps they are not insisting upon a 75-cent rate, but they do want a rate that will give Vancouver rice a preference in this territory."

No evidence was submitted as to the reasonableness *per se* of the proposed rate. Mr. Bathgate, whose company represents the Imperial Grain and Milling Company of Vancouver at Winnipeg, referred to the severe competition of the Southern United States millers, but his statements were of a general character, and in reply to a question of the Chief Commissioner he stated he was unable to furnish any figures showing how much American rice was being brought in. The Prairie Provinces Wholesale Grocers' Association, who had written to the Board as already mentioned herein, made no appearance or representations at the Winnipeg hearing.

Reverting to the Vancouver hearing of November 5: Mr. Mason also dwelt at some length with the position of the Montreal miller as he saw it, alleging that they were at a disadvantage in location and operated under certain handicaps, to which he referred. In a letter under date of December 10 the Mount Royal Milling Company advised they had received copies of the evidence taken at Edmonton, Vancouver and Winnipeg, and requested that they be given an opportunity to appear before the Board to further present their case and correct

misrepresentations of fact that were made at the hearings referred to. The matter was therefore set down to be spoken to at the sittings of the Board at Ottawa on December 16. The Mount Royal Milling Company stated that the analysis of their affairs and the deductions made therefrom by Mr. Mason at the Vancouver hearing contained many inaccuracies which they desired to contradict and correct. They read a statement into the record on this phase of the matter, copy of which was furnished to the Vancouver interests, and on December 23 the Imperial Grain and Milling Company telegraphed the Board stating some of the figures in this statement were incorrect, and were advised in reply that they could file a further statement covering correction of alleged erroneous figures, it being understood that this would not cover the filing of new evidence. Their statement, dated December 30, is on file, together with a letter from the Mount Royal Milling Company, dated January 6, acknowledging and correcting a typographical error in one portion of their statement.

There was also submitted to the Board, under date of January 2, by Mr. Lanigan, with request that it be added to the record (copy being sent to the Mount Royal Milling Company and the Vancouver millers), a copy of an application received by the American railways operating north from Minneapolis to Winnipeg, from the millers of American-grown rice in Texas for reductions in rates north of Minneapolis, alleging that they are unable to compete with millers located in Canada. In this application it is pointed out that the rate from Texas points to Minneapolis is 73 cents and from Minneapolis to Winnipeg 57 cents, the combination making through rate of \$1.30. They stated they have been unable to compete with their competitors located in Canada due to the freight rates they are compelled to pay, and contend it is necessary to have a commodity rate from Minneapolis to Winnipeg of not more than 36 cents. They further stated: "This territory is in equal distance as that from Montreal, and with the heavy duty assessed on shipments into Canada, you can readily see and understand the necessity of a reduction in our proportional rate from Minneapolis."

The following tabulation sets out the present rate situation from the three competing districts to typical Canadian destinations:—

To	FROM					
	Vancouver		Montreal		New Orleans	
	Miles	Rate	Miles	Rate	Miles	Rate
Vancouver, B.C.....			2,882	2.42		
Calgary, Alta.....	642	.75	2,240	2.00	2,594	1.52
Edmonton, Alta.....	766	.75	2,265	2.00	2,786	1.76
Regina, Sask.....	1,109	.75	1,773	1.55	2,091	1.69½
Saskatoon, Sask.....	1,088	.75	1,897	1.68	2,263	1.82½
Brandon, Man.....	1,332	.75	1,550	1.32	1,931	1.40½
Winnipeg, Man.....	1,465	.75	1,417	1.14	1,797	1.22½
Ft. William, Ont.....	1,885	.75	998	.79	2,214	1.33½
Windsor, Ont.....	2,916	.75	555	.37½	1,189	.56½
London, Ont.....	2,803	.75	445	.36½	1,302	.56½
Toronto, Ont.....	2,698	.75	324	.32	1,416	.63
Montreal, Que.....	2,882	.75			1,757	.70½

In explanation of the rates to Calgary and Edmonton, which appear to be out of line with other western points, it may be stated that to these destinations the rate is based on the combination of rates available through Coutts, Mont., while to the other Western Canadian destinations the lowest available rates are made up on the sum of the rates to and from Minneapolis.

On two important points adduced in the evidence there is no difficulty in forming a conclusion. First, it is admitted by both the railway companies and

the Vancouver millers, in whose interest the rate was established, that the special commodity blanket rate of 75 cents was put in to enable the Vancouver millers to get into the eastern markets in competition with rice from the Southern States. Second, the railway companies admit that the present rate adjustment gives the Vancouver miller a decided rate advantage over Montreal in the prairie markets. In other words, the contention of the Montreal miller that the current rate situation to Prairie Province points is unjustly discriminatory against Montreal is admitted by the railways.

With regard to the changed conditions warranting a readjustment of the eastbound rate from Vancouver, it is stated that exceptional conditions existed at the time the present rate was established in April, 1922, viz., there was a tremendous overproduction in the United States, resulting in rice being dumped into Canada at low prices.

The statement is on the record that the delivered price of the American rice at Toronto was, at that time, around 5 cents per pound, whereas on June 21 last it was 7.8 cents per pound, with very little moving from the United States. At the Winnipeg hearing the situation was described by the railway companies as follows: In the months of October, November and December, 1921, the Vancouver miller was asking \$90 per ton f.o.b. Vancouver; then, as a result of United States competition, the price was forced down to \$80 per ton, resulting in the railways giving relief by establishing a 75-cent rate. The present price at Vancouver is \$91 per ton, and it was claimed that the commercial conditions which obtained in the spring of 1922 have disappeared. The Mount Royal Milling Company stated:—

“In order to draw the Board’s attention from the real object in view—the dumping of certain Oriental rices in Eastern Canada, favoured by a discriminating freight rate—the western millers have stated that the low rate was necessary to allow them to compete in Winnipeg with the United States mills.

“The so-called southern rices come from New Orleans and California, and are of three different types—Blue Rose, Carolina, and California Japan. To compete with these rices in Winnipeg, the western mills are offering Japan, mostly grown in California and a smaller lot grown in Japan, and Patna rices imported in the brown from Calcutta.

“May we point out to your Board that the Mount Royal Milling Company have for over forty years imported Patna rice in the brown from Calcutta via the St. Lawrence gateway, shipping rates from Calcutta to Vancouver and Calcutta to Montreal being approximately the same, and until these discriminatory rates came into effect we were large sellers in the Winnipeg market; that we at the present time sell Japan rice in Montreal at lower prices than those prevailing in Vancouver, and that given an equal rate into Winnipeg we could put Patna and Japan types in at as good or better prices than our competitors.

“A great deal has been made by Mr. Mason and Mr. Gavin, representing Vancouver millers, of the importation of cleaned southern rices into eastern Canada in 1923. In that year there was a tremendous overproduction, the result being that it was dumped into Canada at ridiculously low prices. Under normal conditions, and on an average, American rices will always be on a higher priced basis than competing Japan and Oriental rices, as the American miller has his home market protected by a duty of \$2 per 100 pounds on all foreign milled rice entering the States. In any case, under normal conditions, we, as millers of brown rice purchased from New Orleans, can compete, certainly in Eastern Canada, with the products of American mills shipped into Canada.”

The Mount Royal Milling Company do not contend that they require a 75-cent rate to Winnipeg to enable them to compete successfully with the United States

millers. They complained that the readjustment proposed by the railway companies, viz., rates to Winnipeg of \$1.09 from Vancouver and \$1.14 from Montreal, was still discriminatory against Montreal, and when Mr. Lanigan advised (p. 9870) he was prepared to establish a rate of \$1.09 from Montreal they stated (p. 9871) that they were quite agreeable to that. The application of the Texas millers for a reduction in the current rate into Winnipeg has been alluded to. The Vancouver millers, on the other hand, are not agreeable to an increase in their present rate, the continuance of which they contend is necessary to enable them to meet the United States competition. Mr. Mason (at p. 4578) and Mr. Gavin (at p. 4590) admitted there was a change in the conditions, as urged by the railway companies, but maintained that this was only a temporary condition due to a short crop in the Southern States last season, resulting in the price remaining up. The importations of cleaned rice from the United States are decreasing. The figures for the fiscal year ending March 31, covering the territory Quebec and west thereof in Canada, are:—

1922..	13,812,544 lbs.
1923..	10,431,710 lbs.
1924..	7,611,271 lbs.

While exhibits were filed showing importations of United States cleaned rice into the Prairie Provinces, absolutely no evidence was furnished from any source showing what tonnage of cleaned rice the respective Canadian milling interests at Montreal and Vancouver ship into the Prairie Provinces. The same remarks apply to Eastern Canada. Manifestly, such data are very important and of much greater value than general statements, especially when the expressed views of opposing interests do not agree. For example, there is nothing on the record indicating how the rice consumption on the prairies is divided as between the various opposing interests, or what percentage of the total the United States importations amount to. At p. 9850 Mr. Reford, of the Mount Royal Milling Company, stated:—

“The rate of freight from New Orleans to Toronto and London is lower than from New Orleans to Montreal, so that we have more difficulty in competing there, but the average lower price of our importations of Patna and Japan is having its effect and with these we are gradually regaining the market of central and western Ontario, lost to us during the abnormal conditions of 1923.”

His statement that a rate of \$1.09 to Winnipeg would be satisfactory if also applicable from Vancouver, has already been referred to. Upon reference to the tabulation of rates already shown herein it will be noted that to Windsor, Ont., the rate situation is,—

From New Orleans..	56½c.
From Montreal..	37½c.
Difference..	19c.

Under the proposed rates the situation at Winnipeg would be,—

From New Orleans..	122½c.
From Montreal..	109c.
Difference..	13½c.

So far as the rates are concerned, it seems logical, therefore, to conclude that if the competition can be met at Windsor with a rate difference of 19 cents

there should be no great difficulty in also meeting it at Winnipeg with a rate difference of $13\frac{1}{2}$ cents, the difference being practically one-twentieth of one cent per pound, and if Montreal can meet this competition it is not clear why the Vancouver miller could not, especially in view of their contention, as put in evidence and already referred to, that Vancouver was more favourably located than Montreal, and that the Montreal miller was by reason of geographical location severely handicapped in a number of ways, quite aside from the length of rail haul on the outward product.

So far as relates to the ability of these various milling interests to compete in common markets, the position taken by the Mount Royal Milling Company is that they are not complaining of their United States competition. The Vancouver millers state they are not afraid of Montreal but their competition is with the United States. With regard to the Eastern Canadian market, the tabulation of rates shows the advantage that New Orleans has in the matter of length of rail haul. The Vancouver millers further took the position that the important matter for them was not the Eastern Canadian market but that on the prairies. The Vancouver millers stated that regardless of any rate adjustment to Eastern Canada they could still get into that market by a water rate through the Panama canal and rail rate from the Atlantic port at practically as favourable a basis as their present 75-cent rate. Mr. Mason, at pp. 8082-83, stated:—

“Mr. MASON: I would like to say this, Mr. Chairman, in connection with the matter of the Canadian trade. I have not stressed that matter at all. As far as Ontario and Quebec are concerned, we can get into Ontario and Quebec and compete with the Mount Royal Milling Company, regardless of what rate the railways may make because we can ship by water.

“Commissioner OLIVER: Through the canal?

“Mr. MASON: Yes, through the canal.

“Mr. LANIGAN: If you do not mind my interrupting you. Supposing you ship by water, you might get into Montreal during six months of the year, after that you would have to ship to New York, Halifax or St. John and pay the freight from there.

“Mr. MASON: No, we would store, at different points. When navigation is closed to Montreal, we can ship to New York anyway and get into Toronto, Hamilton and London, all those points at practically the same rates as we can get from you to-day. We would rather ship it by rail. It is a much cleaner and nicer way of doing it.

“Commissioner OLIVER: Do I understand you to say that you can ship by water to New York, and rail New York to Toronto at 75 cents?—A. Practically that.”

With respect to the Winnipeg market, the railway companies pointed out the rate from New Orleans is $\$1.22\frac{1}{2}$, plus duty of 75 cents per 100 pounds, or a total of $\$1.97\frac{1}{2}$, whereas there is no duty on the uncleaned rice imported into Canada, and their position was that if, as admitted, the Montreal miller can pay a freight rate of $\$1.09$ into Winnipeg, obviously, so far as any question of rate is concerned, the miller at Vancouver does not require a 75-cent rate to meet the competition of either the New Orleans or Montreal miller.

Eliminating entirely the question of duty, and taking simply the situation as it relates to freight rates, the tabulation of rates shows the advantage is decidedly with Vancouver. If it has difficulty in competing, manifestly factors other than freight rates enter into the matter. Careful consideration of the whole record warrants the conclusion that there are factors aside from freight rates that affect the marketing of rice, such as the grades, quality, price, and

preference in some quarters for certain kinds of rice. There is the statement of Mr. Ross, already quoted, that with some grades they can compete with Vancouver as far west as Alberta, while in others Vancouver competes in Montreal. No doubt there will always be, under such conditions, importations of United States rice in some volume.

Reference was also made to costs with respect to the importation of the raw product. With regard to the matter of advantages or disadvantages of location or production costs, in so far as this involves the proposition that a producer's cost disadvantage should be equalized in the freight rate, it may be stated that this transcends the powers or functions of the Board. In a number of applications which have been before the Board there has been apparent the idea that the needs of a shipper in carrying on his business on a profitable basis should afford a criterion of the reasonableness of rates, and it has been held in numerous decisions of the Board that while the burden is on the railway of maintaining reasonable rates the needs of the producer do not afford a final measure of what a reasonable rate should be.

"The Board has no power to regulate tolls for purpose of equalizing cost of production or geographical, climatic or economic conditions."

Imperial, etc., Co. v. C.P.R., 14 C.R.C. 375; Hudson Bay Mining Co. v. G.N.R. Co., 16 C.R.C. 254; Canadian China Clay Co. v. G.T.R. Co., 18 C.R.C. 347; Western Retail Lumbermen's Assn. v. C.P.R. et al, 20 C.R.C. 155; Dominion Millers' Assn. v. Can. Frt. Assn., 21 C.R.C. 83.

"It is no part of the obligations of the railway under the Railway Act to equalize costs of production through lowered rates so that all may compete on an even keel in the same market."

Canadian Portland Cement Co. v. G. T. and Bay of Quinte Ry. Cos., 9 C.R.C. 211.

With regard to rates to meet competition, market, rail or water, or to develop traffic, the railway companies have a discretion and may voluntarily establish rates lower than could be justly directed or compelled by the Board.

"The Board has indicated that in the matter of rates, for example, its function is concerned with complaints as to unreasonableness or as to unjust discrimination, and that it is not empowered to put in rates simply to develop traffic that is to say, the Board is not empowered by Parliament to act as an arbiter of industrial policy. If it were so empowered, there would need to be explicit words; and if such a power were conferred, the Board would then be able to pass upon the question whether an industry should be allowed to develop in one section or another. No such power has been conferred. The railway, subject to the inhibitions as to unjust discrimination, may give a reduced rate basis to develop traffic. It takes the responsibility of the profit or loss in connection with the transaction. The Board, under the Railway Act, has no profit or loss responsibility, and its intervention in the matter of rates must, as has been indicated, be concerned with matters falling within the broad categories of reasonableness and unjust discrimination, and not with a policy of developing industries through rate adjustments."

Application of District Board of Trade, Coalhurst, Alta., for station facilities. Board's Judgments, Orders and Rulings, Vol. XIII, p. 260.

"So far as water competition is concerned, it has been recognized over and over again in various decisions of this Board that the extent

to which water competition shall be met is in the discretion of the railway. The Board has also held that it is not the privilege of the shipper to demand less than normal rates because of such competition, unless the railway, in its own interest, chooses to meet it. This principle of water competition has also been recognized practically by all rate-regulating commissions. (*Canadian Oil Cos. vs. G.T., C.P. and C.N.R. Cos.*, 12 C.R.C., 351; and *Blind River Board of Trade Case*, 15 C.R.C., 146).

"The Board has also held that it is in the discretion of the railway whether it shall or shall not make rates to meet the competition of markets. The same principle applies here as in the case of water competition. (*Montreal Produce Merchants' Association vs. G.T.R. and C.P.R., Cos.*, 9 C.R.C., 232; and *B.C. Sugar Refining Co. vs. C.P.R.*, 10 C.R.C., 171.)"

Complaint of Zwicker & Company, Ltd., Lunenburg, N.S., Board's Printed Judgments, Orders and Rulings, Vol. XII, p. 152.

It has also been held by the Board on numerous occasions that not only is it in the discretion of the railway whether it shall or shall not make rates to meet water or market competition, but it has also been recognized that when such competition has been lessened or removed it follows that the railway may bring its rates up more closely to its normal basis.

"It is in the discretion of the railway to what, if any, extent it shall recognize this competition; and if competition forces the rates of the railway below its normal basis, it follows that when the competition is less effective the railway may bring its rates up more closely to its normal basis."

Dominion Millers' Assn. v. G.T. and C.P.Ry. Cos., 12 C.R.C., at p. 368.

"If a low rate basis continuing over some period of time were the outcome of an especially effective water competition, it would not necessarily follow that, when this water competition was removed, the placing of a rail rate on a higher basis would mean that the railway would have to bear the onus of disproof."

Dominion Sugar Co. v. Canadian Freight Association, 14 C.R.C., at p. 192.

The same principle is upheld in *Blind River Board of Trade v. Grand Trunk Railway, et al.*, in 15 C.R.C., and at p. 156 it is stated:—

"This in no way limits the right of the railway to take out this rate when the water competition becomes less effective, or when the railway thinks it has become less effective, or even when the railway no longer desires to meet it."

Other similar decisions of the Board that might be referred to are as follows:—

Canadian Lumbermen's Assn. and Montreal Board of Trade v. Grand Trunk, Canadian Pacific, and Canadian Northern Railway Cos., 17 C.R.C., at p. 102.

Nanaimo Board of Trade v. Canadian Pacific Railway, 20, C.R.C., p. 224.

"The railway formerly met this competition but now it has decided not to make rates to meet it. The rates complained of here are not

unreasonable in themselves for the service performed. The only point in issue is whether the fact of the railway having met water competition at an earlier period put the burden upon it to meet water competition now. The Board has held that it is the privilege of the railway in its own interest to meet water competition. It is not, however, the privilege of the shipper to demand less than normal rates because of such competition, which the railway does not in its own interest choose to meet."

Bowlby v. Halifax & Southwestern Railway, 20 C.R.C., at p. 234.

Reference may also be made to the complaints of Martin & Robertson, Limited, and the Imperial Rice Milling Company, at Vancouver, against the increased carload rates on rice from Vancouver to Eastern Canada, which went into effect in August, 1917. Previous to the war, the Eastern Canadian refineries got their rice by all water to Montreal, mostly from India. After the outbreak of the war these refineries commenced purchasing their supplies from Siam, Japan, etc., via the Pacific coast and this movement resulted in the establishment of a special import rate on raw or uncleaned rice from Pacific Coast ports to Montreal of 60 cents per 100 pounds, effective in January, 1916. This was a competitive rate. Subsequently, the rate was extended to apply on cleaned rice and increased to 65 cents and later, owing to the competition having become less effective and the railway companies desiring to return to their original rates, they published tariffs establishing a 75 cent rate. The Board was asked by the complainants to re-establish the 65 cent rate. The Board stated: "It is quite clear that the lower rate was made effective to meet water competition. That competition having lessened, the railway companies are quite justified in taking out their competitive rates. The Board has decided on many occasions that a railway company is not obliged to meet water competition, and that a railway company is free to take out low competitive rates, provided there is no undue discrimination, and that the rates made effective are reasonable in themselves. The rates in question should not be interfered with and this application should be dismissed." (Board's Printed Orders, Judgments and Rulings, Vol. VIII, p. 387.)

As far as relates to the reference made on two or three occasions to re-adjustment of the rice rates from Vancouver and Montreal along the lines of the sugar case (Vol. VIII, Board's Printed Orders and Judgments, p. 347) it may be pointed out that the situation here being dealt with is not parallel to that case. There was not then in question, as here, the question of rates so much below the normal basis, or the factor of competition from the United States; nor were the rates from Vancouver to Eastern Canada involved in the sugar case.

With regard to the proposed rates from Vancouver, as contained in the tariff schedules suspended by the Board's Orders, the rate to Winnipeg is very much below the normal basis and shown as applying as maxima to points west, and the rates to Eastern Canada are very much lower still, proportionately, than the normal rates. There is nothing adduced in evidence that would warrant the Board in finding that the proposed rates from Vancouver were unjust or unreasonable, or contrary to any provision of the Railway Act. Following the principles enunciated by the Board in numerous decisions, extracts from a number of which and references to others have already been quoted, and on the evidence adduced, I consider the railways have justified their position in proposing an advance in the rates from Vancouver.

Mr. Lanigan stated at the Ottawa sittings on December 16, p. 8970:—

"I do not think it would be a good thing, either for Montreal or for Vancouver or for the railways, to make a rate into Winnipeg that would result in the business coming up from New Orleans, and the

Canadian carriers getting 66 miles from the border as their share of the haul."

From the foregoing and other remarks made by Mr. Lanigan, I interpret his position as being that it is the view of the railway companies that any rate established from Vancouver to Winnipeg should enable the Vancouver millers to market their product there in competition with other sources of supply; but that if it did not the railways would reconsider the matter. From the fluctuations in these rates in the past, and the position taken by the railway companies, I consider the assumption warranted that it is the intention of the railway companies, as far as possible, to adjust their rates from Vancouver so as to enable the millers at that point to do business on the prairies and at Winnipeg. The incentive and self interest of the railways to bring this situation about is apparent, as with regard to rice from New Orleans they would only obtain a short haul from the international boundary to Winnipeg of some 66 miles.

Recognizing that it is in the discretion of the railway companies to make rates to meet market competition, and to change rates as conditions change, and also having particularly in view, both as to conditions as they now exist and as they existed in the past, the complete absence of any evidence on the record as to data covering the consumption of rice in the Prairie Provinces and how the traffic is divided between the various interests herein referred to, I do not consider the Board could, if proper to do so, determine from the record what would be the correct rates to prescribe from the standpoint of rates directed with a view to meeting market competition. I consider this is particularly a case falling within the remarks made by the late Chief Commissioner, the Hon. A. G. Blair, in the case of *The United Factories, Limited, v. Grand Trunk Railway Company*, 3 C.R.C., p. 424, where he stated:—

" the railways, when properly influenced by unobjectionable motives, should be better able to judge than this Board can be, as to what course will tend to best promote the common interest of carrier and shipper. . . . Unless we can consider the rate objected to unjust or unreasonable, or contrary to some provision of the Railway Act, we are not authorized, at law, to disallow it; and we are not able to say in this instance that we do consider the rate unjust or unreasonable, and we know of no provision of the Act which it contravenes."

With regard to Montreal, the admission of the railway companies that the current rate adjustment is discriminatory, has already been dealt with.

My conclusions and recommendations therefore are:—

1. That the Orders of the Board Nos. 35608 and 35645 should be rescinded, which leaves it open to the railway companies to reinstate the rates from Vancouver covered by the tariff schedules therein referred to, or a readjustment to some other basis, if they consider proper. Any rates published to be subject at any time, of course, to attack on the ground of their being unreasonable or unjustly discriminatory, or violate some provision of the Railway Act.

2. That with regard to the rates on rice from Montreal the following direction to the railway companies issue:—

- (a) That to Winnipeg the rate from Montreal shall not exceed that contemporaneously in effect from Vancouver.
- (b) That to points west of Winnipeg the rates from Montreal shall not exceed the percentage of the 5th class rate from Montreal, equivalent to the ratio of any commodity rate established from Montreal to Winnipeg below the fifth class rate.

ORDER No. 36347

In the matter of the application of the Mount Royal Milling & Manufacturing Company, Limited, of Montreal, Quebec, for an Order directing the establishment of rates on cleaned rice from Montreal to points in Ontario (Port Arthur and West), Manitoba, Saskatchewan, Alberta, and British Columbia, on a basis not higher than the rates charged on rice shipped from Vancouver, British Columbia, to similar points in the Prairie Provinces, Ontario, and Quebec.

And in the matter of Order No. 35608, dated October 1, 1924, suspending rates on rice shown in the Canadian Pacific Railway Company's Supplement No. 61 to tariff C.R.C. No. W-2659, Item 285-B; the Canadian National Railway Company's Supplement No. 42 to tariff C.R.C. No. W-250, Item 265-B; the Great Northern Railway Company's Supplement No. 18 to tariff C.R.C. No. 1772, Item 155-B; effective October 23, 1924; and in F. W. Thompson's (Chairman, Canadian Freight Association, Western Lines) Supplement No. 17 to tariff C.R.C. No. 44, Item 60-A; and Order No. 35645, dated October 9, 1924, amending the said Order No. 35608, by including therein the Great Northern Railway Company's Supplement No. 24 to tariff C.R.C. No. 1776, Item 420-B:

File No. 27027.2

MONDAY, the 4th day of May, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, May 20 and December 16, 1924; Vancouver, June 23 and November 5, 1924; Edmonton, October 29, 1924; and Winnipeg, November 21, 1924, the applicant, the Imperial Grain and Milling Company, Limited, Vancouver, Martin & Robertson, Limited, Vancouver, the Boards of Trade of Vancouver, Edmonton, and Winnipeg, the province of Alberta, and the Canadian Pacific and Canadian National Railways Companies being represented at the hearing, and what was alleged; and upon reading the submissions filed by the said parties and the Associated Boards of Trade of British Columbia and the Prairie Provinces Wholesale Grocers' Association, and the report and recommendation of its Chief Traffic Officer,—

The Board orders:

1. That the Orders of the Board Nos. 35608 and 35645, dated respectively October 1, 1924, and October 9, 1924, made herein, be rescinded.

2. (a) That the Canadian Pacific and the Canadian National Railway Companies be, and they are hereby, required to establish, on clean rice, in carloads, from Montreal, Quebec, to Winnipeg, Manitoba, rates that shall not exceed those contemporaneously in effect from Vancouver to Winnipeg and

(b) that to points west of Winnipeg, the rates from Montreal shall not exceed the percentage of the 5th class rate from Montreal equivalent to the ratio of the commodity rate established from Montreal to Winnipeg below the 5th class rate.

H. A. McKEOWN,
Chief Commissioner.

Complaint of the Corporation of the District of Saanich, B.C., and the Cadboro Bay Committee, Cadboro Bay, B.C., re proposed extension of the Gordon Head Telephone Exchange, by including the Mt. Tolmie and Cadboro Bay Districts, British Columbia Telephone Company.

File 32560.3

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of October 2, 1924, the following memorandum of Reasons for Judgment—enclosed within quotation marks—was signed by me:—

“The Board had before it a resolution of the Corporation of the District of Saanich, B.C., protesting against the ‘proposed extension of the Gordon Head Telephone Exchange by including Mt. Tolmie and Cadboro Bay Districts;’ and setting out the opposition of the council to the change, and its desire to co-operate with the people concerned as well as with the Victoria Chamber of Commerce against the change.

No detailed statement of the facts involved was at the time submitted. It was, however, understood by the Board that what was involved was the question of the Exchange area; and with a view to the applicants considering factors which had been before the Board in other connections, they were referred to the *Complaint of the British Columbia Municipalities re new Exchange established at Kerrisdale, B.C., Board's Judgments and Orders, December 1, 1921, Vol. II, p. 325.*

The applicants were so advised so they might consider in what respects, if any, the judgment in the *Kerrisdale Case* was not applicable to what was herein involved.

At a later date, the Board received from Mr. F. G. Aldous, Secretary of the Cadboro Bay Committee, *re* British Columbia Telephone Company, a statement as to the points involved, which were later developed in evidence.

As presented before the Board, the situation is that for a considerable period of time residents in the Cadboro Bay District have been connected with the Victoria Exchange. It was stated that for a rate of \$3.40 per month the user had access to all those on the telephone lines within the Victoria area.

The Gordon Head Exchange is about five miles from the Victoria Exchange. The Gordon Head District itself is stated to be 1.81 miles from Cadboro Bay. The company stated that the Gordon Head area as a whole was growing and they found it necessary to erect a building and establish an exchange; and that in laying out the boundaries of this exchange, they were of the opinion that Cadboro Bay should be included. In its rearrangement, the local calling rate for Cadboro Bay is \$1.50 per month. This is on a six-party line. Calls from this area to Victoria are 5 cents and are a number-to-number charge. It was stated by the representative of Cadboro Bay that the Gordon Head District had always been used to the 5-cent toll.

Details were submitted regarding the service on the toll system which was claimed to be unsatisfactory; but it was pointed out to the applicants that the Board's jurisdiction was concerned with rates.

In substance, the complaint of the representative of Cadboro Bay is that the rearrangement whereby the local calling rate does not cover Victoria as well is objectionable, because there are established social and business relations between this district and Victoria which are interfered with by the rearrangement of rates. The argument in this respect is that if a calling rate of four calls per day, which is said to be low, exists, then the total charges involved will be so great as to prevent ready telephonic communication between Cadboro Bay and Victoria.

It was testified by one storekeeper that his business was so located that people who could have telephoned him on the Victoria flat rate would, in future, need to pay tolls, and it was intimated that this would interfere with his business. He at the same time stated that while he did a little business in the Gordon Head District, there was already a storekeeper in this section to meet the needs of the people living in that part.

While the charges involved were criticized on the ground that the total of the local calling rate and of the toll rate would be an increased burden, *neither factor in the total charge—that is to say, the local calling rate and the toll—was criticized as being either unreasonable or discriminatory.*

The applicants urged their case very strongly and there is no doubt a strong feeling that they had been and would be detrimentally affected by the arrangement involved. However, the fundamental question is the power of the Board in the matter.

As already pointed out, the representative of the applicants was at the outset referred to the decision in the *Kerrisdale Case*, so that he might consider fully in what, if any, respects that decision was not applicable to what is here involved.

The representative of the Cadboro Bay Committee was apparently not acquainted with the decision; at least, he did not devote any attention to it, although the matter was referred to by the clerk of Saanich municipality, who claimed that the state of facts involved in the *Kerrisdale Case* was not on all fours with that involved in the present case.

The matter was allowed to stand so that the Board could have a full opportunity of determining in what respects, if any, the facts involved in the present application are differentiated from those which have already been dealt with by the Board in other judgments dealing with the powers of the Telephone Company in respect of the rearrangement of exchange areas. On such determination manifestly depends the conclusion whether there is a grievance which it is within the powers of the Board to remedy.

In 1915, the Board had before it a case in which it was held that it had no jurisdiction to deal with the rearrangement of the Telephone Company's service between different exchanges, the matter being one of the internal management of its own business.

Tinkess vs. Bell Telephone Co., 20 C.R.C., 249. The judgment rendered was concurred in by three other Commissioners—Chief Commissioner Drayton, Deputy Chief Commissioner Nantel, and Commissioner Goodeve.

The judgment in question sets out in quite full detail the limitations of the Board's power in regard to telephones, and the way in which these powers are differentiated from those exercisable in regard to railways; and after analyzing these sections, the following opinion was expressed at p. 253:—

‘ . . . it will be found that the jurisdiction conferred upon the Board in respect of telephone companies is a rate jurisdiction, including under such rate jurisdiction the provisions of the Railway Act in regard to discrimination.’

It is not necessary to go into the detail of this judgment, but it may be pointed out that under the hitherto existing arrangement the applicant, who was connected with the Kemptville Exchange, had also free service to North Gower. A change of connection was made to South Mountain, which entailed a toll being made for connection from North Gower. The applicant stated that a very considerable portion of his business was with the latter point, it being stated by him that this would affect one-third of the free territory which was now available to him. Detail was put in in regard to the burden of traffic on the lines and this was analyzed from the standpoint of congestion. The deci-

sion of the Board, however, makes clear that the exchange service involved not being a matter over which the Board had jurisdiction, it could not revise tolls on the basis of whether there was or was not between the exchanges in question a congested condition of service.

In summing up its conclusions, the Board used the following language:—

‘The company in the present application is making a readjustment of its exchange service. The adjustment as to exchange connection will no doubt extend the free area in one direction while curtailing it in another. Some of the applicants have established a business connection in the area in which there will now be a telephone charge. The statistics submitted by the Bell Telephone Company would seem to show that the preponderance of telephone calls will be met, without the extra toll charge, by the rearrangement which it proposes. This is contested by the applicants. The rates charged are not attacked. Allegations of discrimination are not made. The rearrangement which the Bell Telephone Company proposes to make is a matter of the internal management of its business. Parliament has conferred upon the Board no jurisdiction to deal with the matter involved, and, therefore, no further action in the matter can be taken by the Board.’

In 1921, in the *Complaint of the Town of Dundas, et al, vs. Bell Telephone Company*, the Board had before it nine complaints. The decision in question will be found in the *Board's Judgments and Orders, May 15, 1921, Vol. XI, p. 83*. What was involved in the various applications was the question of rearrangements of district rates proposed by the Bell Telephone Company. For example, there existed a district rate between Dundas and Hamilton under which subscribers in Hamilton might have free connection with subscribers in Dundas, with the exception of the rural lines, by paying the Hamilton rate. Under the existing arrangement, the telephone user in Dundas might exercise his option of having the Dundas rate and paying toll rates for any messages he might have between Dundas and Hamilton. On the other hand, he could pay the Hamilton rate receiving full access to the telephones of both places. It was stated the arrangement had been of long duration, it having been in existence for some forty years.

The Telephone Company proposed that the exchanges should be separated, each doing business on its own exchange rate; and a provision was made taking care of the interchange business by means of long distance toll rates. At first, it had been proposed to provide a 10-cent long distance call charge for the service between Dundas and Hamilton; subsequently, this was revised by putting a two-party service on the 5-cent charge.

In opposition to the proposal of the Bell Telephone Company to effect the rearrangements referred to, there was adduced not only the long duration but also the contention that the rearrangement proposed would effect an increase in the revenues of the Telephone Company.

The judgment followed the decision in the *Tinkess Case* and concluded with the following words at p. 91:—

‘As I understand the law, therefore, the district rearrangements proposed are within the scope of the company's powers, and the Board has not been empowered to interfere with what is a matter of the internal management of the business, except where the question of discrimination is raised. Those opposing the revision did not raise the question of discrimination.’

The judgment rendered was concurred in by two other Commissioners—Chief Commissioner Carvell and Commissioner Boyce.

The matter was also before the Board in the latter part of 1921 in the *Complaint of the Union of British Columbia Municipalities re new Exchange*

established at Kerrisdale, and increase in Long Distance tolls. Board's Judgments and Orders, Vol. XI, p. 325. The judgment rendered was concurred in by Commissioner Rutherford.

In the application, reference was made to the division of the exchange territory hitherto attaching to the Eburne Exchange. It was pointed out that the result of this was that the toll charge now became operative between Kerrisdale and Eburne; and it was argued that this toll was in the nature of a long-distance rate and that as long-distance rates had not been included in the application of the British Columbia Telephone Company in regard to rates, with which the Board had dealt at an earlier date, they were without sanction.

These matters are not, however, material to what is herein involved. What is material is that the judgment reaffirmed the position taken in the *Tinkess Case* and in the *Town of Dundas et al vs. Bell Telephone Company*.

It was admitted by counsel for the Union of British Columbia Municipalities that there was nothing in the legislation of the Telephone Company concerned which widened the powers in regard to telephone facilities over and above the grant of power given by the Railway Act. As to the 5-cent toll concerned between the two exchanges above referred to, it was pointed out that the toll was not attacked as being either unreasonable or discriminatory, and that in the absence of such attack the Board had no power to intervene.

Having in mind the principles enunciated by the Board in the judgments above referred to, which judgments extend over a considerable period of time, I have to conclude that on the particular facts involved in the present application there is nothing to take them out from under the decisions I have cited."

II

Following this, Commissioner Boyce wrote a draft judgment, which may be summarized as follows:—

(1) The question involved was a question of law and, therefore, the opinion of the Assistant Chief Commissioner, who presided, prevailed under section 12, subsection 2 of the Railway Act.

(2) While holding that the matter turned on a question of law, Commissioner Boyce, however, did not agree with the construction which, following the decisions, I placed on the matter.

(3) He considered that the Board in this case was confronted by an increase in tolls, and that the Board had full jurisdiction to deal with or disallow such increases untrammelled by the decisions which had been stated.

In holding there was an increase in tolls, he dealt with the total possible charge made up of the local exchange rate, plus the total computed or estimated toll rate charges between the exchanges, as constituting an increase in tolls.

(4) Thereafter, he stated that if the decisions quoted had the effect contended, they should be reviewed to determine "Whether variation is not desirable in such a way as to permit of the widest control of all rate grievances however arising. . . ."

Owing to his absence in the West in connection with the Board's sittings and subsequent absence due to ill health, Commissioner Oliver was not able to consider the matter until about the middle of December. In his memorandum, he does not refer to the decisions which I have quoted. As I understand his position, it is in substance,—

(1) That the complaint is one as to rates and within the jurisdiction of the Board;

(2) That the evidence adduced showed that the subscribers of Cadboro Bay had suffered substantial and serious injury through change in telephone rates;

(3) That no evidence had been adduced justifying the increase;

(4) That the rates and conditions should be re-established as they were prior to February 26, 1924.

Following this, my colleagues who sat with me in the original hearing arrived at the conclusion that a question arose as to whether the decision in the case turned on law or on fact, and they took the position that there being such a difference in this regard, and there being involved the further question of looking at the whole matter from the standpoint of the bearing of the decision on other matters pending, the opinion of the Chief Commissioner should be asked for.

I take no exception—nor do I consider that I have any right to take any such exception—to a change in draft memoranda of judgment, if, before they are issued, further consideration seems to justify such a change. I recognize that, under the Railway Act, the decision of the Assistant Chief Commissioner, when presiding, is final on a question of law, when, in the opinion of the Commissioners sitting, or a majority of them, there is a question of law involved.

As the situation developed, my colleagues were of the opinion that there was not a clear-cut question of law involved and that the question concerned was so mixed with fact as to weaken the efficiency of section 12, subsection 2. Under these circumstances, my colleagues were, of course, quite within their rights in taking the action I have summarized.

The matter was then placed before the Chief Commissioner, who has given the subject consideration. His opinion in the matter has been considered by my colleagues, who have now placed said opinion before me.

III

In the earlier portions of my Reasons for Judgment above quoted, I have cited the decisions which appear to me to be pertinent and controlling; and I may be permitted to point out that the decisions which I have cited and which with great respect to the opinion of the Chief Commissioner hereinafter cited, I am unable to accept as being inapplicable to what is involved in the present case, were rendered at different dates. Excluding the present application, the cases in question were dealt with in the period extending from 1910 to 1921. During the period when the decisions in question were rendered, twelve Commissioners held office; ten of the Commissioners who so held office participated in the hearings and agreed in the decisions.

In citing the decisions above, it was assumed that the findings of the Board thereunder were so clearly established that it was not necessary to go into any considerable volume of analytical detail to show exactly what was involved. Having in mind the way in which the situation has developed in the present case, it is justifiable, with a view to making clearer what is involved, to present a summary analysis of the points contained in the evidence and in the decisions to which reference has been made.

DIVISION OF TERRITORY. In the *Dundas Case*, Weston, Islington and New Toronto were grouped in one division. It was proposed to divide these so that in one group would be Weston, while New Toronto and Islington would be in the other, with a toll charge between the two groups. The judgment sanctioned this (*See p. 85*).

In the question arising between Dundas and Hamilton, those resident in Dundas had a local exchange rate of their own. In addition, an arrangement had grown up and which had existed for years whereby a resident of Dundas, by paying the Hamilton rate, could have access to all names on the Hamilton Exchange. What was proposed by the company was to substitute for the hitherto existing practice an arrangement whereunder the Hamilton rate would no longer be applicable to the Dundas telephone user. Instead of this, he would pay the local exchange rate, plus a 10-cent toll in the case of a call

from Dundas to Hamilton. This was modified so that a 5-cent call charge was installed. This was sanctioned by the judgment (*See pp. 83 and 91*).

Rockwood and Guelph were two separate exchanges, eight miles apart. For a period of ten or twelve years, an arrangement had existed whereby there was a direct connection with Guelph, without the interposition of another inter-zone toll. The judgment sanctioned the rearrangement (*Dundas Case p. 86*).

Welland, Ridgeville, Smithville, Wellandport and Marshville were separate exchanges which had been on a common rate; that is to say, the names in the various exchanges might be reached without the intervention of an inter-zone toll. The company proposed to make two groups of exchanges, the first being composed of Ridgeville and Welland, and the second of the other three exchanges; an inter-zone toll to apply between. The judgment in the *Dundas Case* sanctioned this (*p. 86*).

A similar position was taken in other cases. In the *Kerrisdale Case*, the effect of what was proposed was to divide the exchange territory of the Eburne Exchange into two parts, so that a toll charge was operative between Kerrisdale and Eburne (*See judgment, p. 326*).

In the *Tinkess Case*, it was contended by the applicant that the rearrangement proposed affected one-third of the free territory which the applicant had now available (*Tinkess Case, p. 250*). It was further set out that some of the applicants had established a business connection in the area in which, under the rearrangement proposed by the company, there would not longer be free service but, instead, a telephone charge (*p. 255*).

It was stated further in the judgment, at *p. 255*, that the company in its application was making a readjustment of its exchange service, and it was pointed out that the adjustment as to exchange connection would, no doubt, extend the free area in one direction while curtailing it in another.

INCREASED REVENUE.—In the *Dundas Case*, it was contended that a result of the rearrangement proposed would mean that those formerly enjoying the Hamilton connection on the Hamilton rate would be subjected to increased costs as a result of the combination of the Dundas rate and the inter-zone calling rate (*See p. 85*).

In the same connection, reference may be made to the statement submitted in evidence by Mr. Dickson, on behalf of the Dundas telephone users. This will be found in *Evid. Vol. 313, pp. 9287-9288*. In pointing to the effect of the 10-cent toll which was proposed, he said this would mean that business subscribers in Dundas would pay from 76 per cent to 185 per cent more than at present. This was on a basis of 3.6 calls per day for the seventy-nine subscribers taking the Hamilton service.

In the same connection, at *pp. 9289-9291*, he spoke of the large increase in revenue, saying there would be a large increase in revenue to the company and a corresponding large increase in cost to the users.

The same position was taken at the same hearing in regard to the effect on the township of Wainfleet (*See p. 9292*) and also in regard to the effect on Vineland and Jordon of Grimsby being put in a position where it was necessary to have a toll charge to get conversation through (*p. 9305*).

The increases in revenue thus referred to are made up of the earnings on the combination of the local exchange rate, plus the inter-zone calling rate. It is not a case of the single rate hitherto existing being compared with the single rate now installed. It should be noted that one part of the computation, so far as the inter-zone toll is concerned, is based upon averages and assumptions in regard to the amount of calling involved.

In the group of applications dealt with under the heading of the *Dundas Case*, the local exchange rate was not lower; but, as pointed out, there was a rearrangement of territory involving the use of the inter-zone calling rate between sections which formerly were under a common exchange rate.

In the *Cadboro Bay Case*, there is, as a result of the readjustment, a decreased local exchange rate in the new exchange territory, plus an inter-zone calling toll between Cadboro Bay and Victoria.

While the Board had before it in the *Dundas Case* and in the *Tinkess Case* evidence bearing upon alleged increases of revenue arising from the readjustment, what was held was, in substance, that in the absence of evidence that the rates installed under the readjustment were unreasonable, the mere allegation of increased revenue, dependent as such allegation is upon conjecture as to the average toll business between zones, was not a factor which justified the Board preventing the rearrangement which the company proposed, with its attendant readjustment in rates.

RATES AND TOLL CHARGES.—Incident to the foregoing heading, it has been pointed out that in the *Dundas Case* there was involved a rate within a rearranged district, plus a toll to points beyond, which were formerly treated as being in the same area. From the judgment, the following may be excerpted:—

“While there has been a revision of rates, the principle of a lower toll rate, limited to a particular type of service and taking into consideration density of traffic has not been withdrawn in the Hamilton-Dundas case, and the burden therefore remains on the company of putting in for this traffic a two-number rate substantially lower than the standard two-number rate. In doing so, the company bears the burden of any attack made on the ground that the arrangement is discriminatory.

“While in the case of the other districts affected, criticism was made that the revision would affect revenues the toll proposed to be charged between the rearranged portions of what was hitherto a common district was not attacked as unreasonable. Under these conditions, no action in respect of the application of the standard long distance rates is necessary.”—*Dundas Case*, p. 91.

In the *Tinkess Case*, at p. 255, it was pointed out that the rates were not attacked. The rates in question are the local exchange rates as distinct from the inter-zone toll rates.

In the *Kerrisdale Case*, pp. 328, 329, the inter-zone toll was not attacked as unreasonable or discriminatory.

IV

In a more condensed way, as I understand them, the judgments recognize the right of the Telephone Company to readjust its facilities, and in connection therewith to readjust the exchange areas served by such facilities. As a result of this, the Telephone Company may have a local exchange rate plus an inter-zone toll rate. Allegations of increased revenue arising from such an arrangement do not, under the judgments, afford criteria of the relative unreasonableness, or otherwise, of the rates concerned. It is open to those protesting against the rearrangement to attack as unreasonable for the local service within the revised exchange territory the local exchange rate applicable thereto, or (and) to attack as unreasonable the inter-zone calling rate. It is open, further, to those protesting to allege that the treatment proposed to be given as a result of the rearrangement of rates arising from the rearrangement of territory is discriminatory.

As pointed out in memorandum of Reasons for Judgment above, neither the local exchange rate nor the inter-zone toll was attacked as unreasonable by the applicant, nor is there anything before the Board persuasive in regard to the existence of discriminatory treatment.

As the matter presents itself to me, then, what is involved in the present application is covered clearly and fully by what is involved in the hearings and decisions in the series of cases which has engaged the Board's attention; and I am forced to the conclusion that the only position I can take is a reaffirmation of my statement that what is herein involved is covered by the line of controlling cases.

V

The Chief Commissioner, in his opinion, quotes the following from evidence:—

"After considerable evidence had been given and argument made on both sides, the matter was summed up thus:

"The ASSISTANT CHIEF COMMISSIONER: Is not this what it comes to? In the discussion, there are two factors: one is the local rate of \$1.50; and the other is the admission of what will be the effect in the future, and the applicant putting it forward states that taking the rate plus what the usual calling has been, or what their anticipation of the calling business will be, that the two will give a higher rate between their section and Victoria than they are paying at present.

"Mr. McPHILLIPS: That may be so. I cannot refute that.

"The ASSISTANT CHIEF COMMISSIONER: That is the essence of what they are saying.

"Mr. McPHILLIPS: Yes. But I am saying I do not care where you make the division, you will have some one who will be able to make that case. Now, is that a case of the division or of the rate? My submission to you is that in every case like that it is a case of division and not of rate.

"Commissioner OLIVER: If there is no question of rate, all you have to do is to give these people their single call under their flat rate.

"Mr. McPHILLIPS: I do not understand that, sir.

"Commissioner OLIVER: I say if there is no question of rate, all you have to do is to make your division as you please, but give them their single call as a part of their rate, if there is no question of rate.

"The ASSISTANT CHIEF COMMISSIONER: The objection to the division is that they think a necessary consequence of it will be a greater burden of rate charge.

"Mr. McPHILLIPS: I am admitting that. I say that will occur in any division you make.

"The ASSISTANT CHIEF COMMISSIONER: Then are we not getting off on a metaphysical distinction when you say it is not a rate question. What is being talked about is the rate burden or charge resulting from a division of territory.

"Mr. McPHILLIPS: That may be. I am admitting that that may be so in any division we may make.

"Commissioner BOYCE: They say you can make what division you like, in accordance with the best judgment of the management of your company, but do not increase our rates by so doing.

"Mr. McPHILLIPS: Yes, but have they a right to say that?"

At page 4662:

"The ASSISTANT CHIEF COMMISSIONER: Then that is really the essential thing—the change of rate?

"Mr. SEWELL: Yes, I think that is the essential thing."

At page 4664: Mr. Aldous (first witness called) stated:

"On May 13, Mr. Chairman, I wrote to the Board of Railway Commissioners on this matter of the Telephone Company. Before reading this letter, I quite understand that your Board deals entirely with matters of rates; you have advised me on that point, and although there are many other reasons for our objection in this matter, I will try to stick to the point of rates, and I will ask you to listen to our petition impartially."

If anything turns on the significance of my statements as bearing on the matter, I may point out that in order to facilitate the discussion and render the matter presented by the applicant more easy of comprehension, I was summarizing what was said, not acquiescing in the conclusiveness of the summary as a matter of interpretation.

After reaffirming the position that the Board has no jurisdiction over the Telephone Company in respect of any rearrangement of exchange areas which it might determine, the Chief Commissioner continues:—

"There still remains the question of the reasonableness of the rates charged, and I am not aware of any case which denies the Board's right to determine that matter. In the judgment of the *Town of Dundas et al v. the Bell Telephone Co., Board's Judgment and Orders, Vol. XI, p. 83, it is stated: 'While in the case of the other districts affected, criticism was made that the revision would affect revenues, the toll proposed to be charged between the rearranged portions of what was hitherto a common district was not attacked as unreasonable.'*"

The Chief Commissioner continuing states that in his opinion the foregoing quotation from the *Dundas Case* "is the point which distinguishes the present case from the one from which this quotation is made, and others cited in the judgment. For instant, *Tinkess v. Bell Telephone Co.*, in which, at p. 255, the judgment states 'the rates charged are not attached.' In other words, I think if a rearrangement of district involves an increase of rates, while the right to effect such rearrangement cannot be questioned by the Board, nevertheless the jurisdiction to supervise the reasonableness of the rates as so increased still abides with us. Consequently, dropping the question of rearrangement of exchange areas altogether, I think the Board should determine the reasonableness of the rates proposed to be charged."

The only comment I have to make is that, as already pointed out in the *Cadboro Bay Case*, neither the local exchange rate by itself nor the inter-zone rate by itself was attacked as unreasonable; and, as pointed out, the analysis of the evidence and decisions is equally applicable not only to the earlier cases but also to the present one as well. Consequently I am unable to attribute to the citation in question the significance which the Chief Commissioner does.

The position as to the controlling effect of authority having been adversely ruled upon, the matter now appears to stand as one involving the reasonableness of rates.

April 15, 1925.

COMMISSIONER BOYCE: By section 12, subsection (2), of the Railway Act, the decision of either the Chief Commissioner, or the Assistant Chief Commissioner, upon a question of law arising in a case then before the Board, in which either one or the other preside, must prevail. I am, therefore, bound by the decision of the Assistant Chief Commissioner, who presided in this case, at its hearing, upon the question of law, in disposing of this complaint.

With great respect, however, I may, perhaps, be permitted to say that I do not hold quite the same view. While admitting the soundness of the principles of the decisions cited, as applied to the facts then in issue, and that as regards telephone companies under its jurisdiction, the exercise of the Board's functions is, by the Railway Act, limited to rate regulation and control, I am strongly of the opinion that the full exercise of those functions should not be blocked, and was never intended to be blocked, by the interposition of a plea, by a telephone company, that the tariffs, or tolls, complained of, resulted from the exercise of the discretion of the telephone company in changing its telephone exchange areas, and, for that reason, the Board was stripped of its power to control the rates so imposed, except upon the one ground of unjust discrimination. I do not so read the provisions of the Act, and I think they are not subject to that restricted interpretation, or construction. See Railway Act, section 375, subsection (2).

I think that it is quite open to the Board, in all cases of this kind, upon a full and searching inquiry into the facts of each case to refuse to allow the increase in tolls effected by the company, in the manner in which such increases were brought about in this case, having regard to the duty of the Board to exercise full and unrestricted control of the telephone tolls in the interests of the public as well as the company.

I would deprecate and deplore the suggestion that this Board's powers to remedy what seems to me to be, in its effect, a substantial rate grievance, should be confined and circumscribed in the manner referred to, and I do not think that the principle of the decisions cited carry us that far.

If such rate consequence, as are the basis of this complaint, can be inflicted by a telephone company, whose tolls are subject to the Board's jurisdiction, without redress by anyone, under the guise, or excuse, of rearrangement of telephone exchanges, with the result that the Board's jurisdiction over tolls involved is ousted, the Board's control of telephone tolls would be easily displaced in many conceivable cases, involving serious and unjust hardship upon the subscribers, under the cloak, protection, and plea, that what resulted in increase of tolls to subscribers was done in rearrangement by the company of its telephone exchange areas, and is, therefore, not reviewable by this Board.

If that be the effect of the decisions cited, I respectfully suggest that they should be reviewed by the Board to determine whether variation is not desirable in such a way as to permit of the widest control of all rate grievances, however, arising, and no matter to what cause attributable, in accord with the broad and remedial spirit, meaning, and intent, of those sections of the Railway Act, conferring power on this Board as to control of telephone rates and tolls. I think that it is not within the meaning and intent of the Act that the full investigation of such grievances should be so barred or restricted.

In consonance with above, and subject to my view as to the application of section 12, subsection (2), of the Railway Act, and with great respect to opinion to the contrary expressed by the Assistant Chief Commissioner, who presided at the hearing, I would give effect to this complaint as one going directly to the question of rates to the subscribers affected by the change, in telephone exchange area, and who complain against the increased rate burden thereby imposed upon them. If because the facility clauses of the Act do not apply to telephone companies, the company can change its telephone areas at will, I am strongly of opinion that in the circumstances complained of, it should not be permitted, as a consequence of such change, to make, directly or indirectly, any change in rates, which would have the effect of increasing the rate to the subscribers in the area complaining, and the Board, in my view, should so order. The onus would then rest with the telephone company to readjust its rates to this principle, and if it sees fit, make such application as may be necessary for the

purpose. In all such cases, i.e., of changes in telephone exchange areas, involving changes in rates, I think that the burden of showing that the altered or new schedule of tolls consequent upon such change was fair and reasonable and not discriminatory, is on the telephone company making the change resulting in the altered schedule, and not upon the subscribers, who, otherwise, by a change in telephone area, not controllable by the Board, might be subjected to increased tolls. I think the placing of the onus thus on the company initiating for its own convenience of operation, such a change of exchange area would be just and equitable and in accord with the true intent, spirit and meaning of those sections of the Railway Act applicable to telephone tolls, and which it is the duty of the Board to administer in all cases in the interest of the subscriber, the telephone company and the public. I do not think that, in such an event, the subscribers whose interests are affected, perhaps prejudicially, by an act beyond the power of this Board to control, should be called upon to accept such an onus.

In this case the interests of subscribers are prejudicially affected, and the company has not, in my opinion, justified the prejudice as it should be required to do.

OTTAWA, April 20, 1925.

Commissioner Oliver concurred.

ORDER No. 36302

In the matter of the complaint of the Corporation of the District of Saanich, in the province of British Columbia, and the Cadboro Bay Committee, Cadboro Bay, B.C., against the proposed extension of the Gordon Head Telephone Exchange by British Columbia Telephone Company, herein-after called the "Telephone Company," by including the Mount Tolmie and Cadboro Bay Districts, B.C.

File No. 32560.3

THURSDAY, the 23rd day of April, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Victoria on the 25th day of June, 1924, in the presence of counsel and representatives for the complainants and the Telephone Company, the evidence offered and what was alleged, and upon reading the later submissions filed in support of the complaint and on behalf of the Telephone Company,—

It is ordered: That until otherwise directed the exchange rates to be charged by the Telephone Company to subscribers in Cedar Hill and Cadboro Bay, now connected with the Gordon Head Exchange, instead of as formerly with the Victoria Exchange, be restored to those rates in effect on, and prior to, June 1, 1924; and that no other rates, or tolls, be levied, or charged, to any subscriber, in such area, than those in force prior to service of the Telephone Company's notice to its subscribers, effective the 1st June, 1924, and which notice is disallowed.

H. A. McKEOWN,
Chief Commissioner.

Re Northwest Grade Separation, Bloor Street Subway, Toronto.

Application of the City of Toronto for reconsideration of the plans approved as provided for in Order No. 35153, dated 5th June, 1924, in so far as they relate to the Milnes Coal Yard and Mickle-Dyment Company on Perth Avenue.

File No. 32453.

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner:*

In this application the city of Toronto has asked for reconsideration of a certain plan approved by the Engineer of the Board and prepared in pursuance of Order No. 35153, dated June 5, 1924, in so far as such plan relates to the entrance to the Mickle-Dyment Lumber Company on Perth avenue.

In order to effect what is known as the Northwest Grade Separation, Bloor Street subway in Toronto, the entrances of several business establishments in the locality were affected, and it became necessary to readjust the same. That leading to the Loblaw place of business, near the western end of the subway, on the Newmarket subdivision of the Canadian National Railway, has been dealt with by Order No. 36272, dated April 9, 1925.

There remains for consideration the entrance shown on the plan above referred to provided for the Mickle-Dyment Company, a business establishment situated upon the northeast corner of Bloor street and Perth avenue, to which access was formerly had from the north side of Bloor street, but since the separation of grade occasioned by the construction of the subway an entrance to the business premises of the last-mentioned firm is given from the western side of Perth avenue at a distance of 43 feet from the north side of Bloor street.

Apart from the inconvenience, if any, occasioned to the Mickle-Dyment Company by alteration of its means of exit and entrance, and the consequent disarrangement of its business, there can be no objection to the layout shown on the plan submitted. In the testimony given by Mr. Harris, Commissioner of Works for the city of Toronto, he indicates that the city's objection is confined to entrance being given to subways on an inclined grade. In the present instance the entrance to the Mickle-Dyment works is being removed from the inclined grade of the subway proper and taken a distance of over 40 feet along Perth avenue, and a suitable ramp is given from Perth avenue. The construction of the subway necessitated an alteration in the level of Perth avenue, and at the point at which access is given to the Mickle-Dyment works the ramp has a 5 per cent grade and a length of about 50 feet.

Having had an opportunity of viewing the situation, and having regard to the easy access afforded to the street and to the very reasonable and ordinary alteration of the grade, I do not think the objection should prevail. In my view, no dangerous element is added to the movement of traffic at that point, and I think the motion to reconsider the plan in this regard should be dismissed.

The entrance to the premises of the Milnes Coal Company was also discussed during the argument. The place of business of the latter firm is on the southwest corner of Bloor street and Perth avenue, and its entrance has always been on the western side of Perth avenue at a point about 37 feet south of the south line of Bloor street. It is not proposed to alter the location of the entrance to this place of business, but changes involved in the construction of the subway have made it necessary to lower the grade of Perth avenue, and, consequently, the entrance to the Milnes coal yard must be lowered accordingly.

Concerning this entrance, Mr. Harris confined his objection to the statement that he thought another entrance should be found so that those using the company's yard should "come out on the level portion of the roadway." The effect of this would be to move the entrance further from the corner of Bloor street and Perth avenue thus taking it further from the entrance to the subway. In this instance also the ramp has a grade of 5 per cent and a length of 16 feet as it leads into the premises of the Milnes Coal Company.

Having looked over the situation I consider, as in the entrance to the Mickle-Dyment Company, that it is a very reasonable change of level and adds nothing of danger to the movement of traffic. To move it further from Bloor street would occasion expense which, I think, is unnecessary, not only in the reconstruction of the road entrance, but in removing stationary scales or some distance.

I think the layout in both of these particulars should be approved, and would dismiss the present application.

OTTAWA, April 28, 1925.

Assistant Chief Commissioner McLean concurred.

Application of the Corporation of the City of London, Ont., under sections 257, 258, and 259, for an Order directing the Canadian Pacific Railway Company to erect and maintain gates or provide other sufficient protection at Quebec street, in the City of London, Ont., where the said Company's railway intersects the said street.

File 8038

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Application is made for protection at Quebec street, in the city of London, Ont., for two tracks of the Canadian Pacific Railway Company across that street.

Attention was given at the hearing and in subsequent written submissions to the question of seniority as between the railway and the city. Where railways and highways intersect and there has been traffic on both for some considerable period of time, it is open to the Board, under its rulings, to consider the questions involved on the facts and irrespective of the niceties pertaining to the senior and junior rule.

While the senior and junior rule has, under the established practice, been applied with exactness to situations arising between railways in respect of railway crossings, the situation has been otherwise in regard to railway and highway intersections; and the mere fact of seniority at the point of crossing does not preclude consideration being given at a later date to the traffic and other factors on the railway and the highway which may be considered pertinent to the determination of the matter.

After the hearing, an inspection of the crossing was made by the members of the Board, and an inspection was also made by the Board's engineer.

Adjacent to and west of the crossing are yard tracks and a considerable volume of switching movements goes over the crossing. The Canadian Pacific Railway Company states that there are 158 to 168 switching movements take place in the period of 24 hours. Reference has also been made to the light engine movements. The Board's Engineer, who has considered the matter, makes the following report:—

"As will be seen from the plan, the crossing is fairly open. Approaching it from the north, the view of trains from the east is as follows:—

"When 150 feet from the track, trains can be seen 67 feet from the crossing.

"When 100 feet from the track, trains can be seen 150 feet from the crossing.

"When 70 feet from the track, trains can be seen 600 feet from the crossing.

"When 50 feet from the track, trains can be seen 800 feet from the crossing.

"Approaching from the north, trains from the west can be seen for a considerable distance away before the view is obstructed by the station; then after passing the station, as follows:—

"When 150 feet from crossing, trains are visible 200 feet from crossing.

"When 100 feet from crossing, trains are visible 230 feet from crossing.

"When 50 feet from crossing, trains are visible 400 feet from crossing.

"Approaching from the south, the view of trains from the east is as follows:—

"When 200 feet from crossing, trains are visible 100 feet from crossing.

"When 150 feet from crossing, trains are visible 130 feet from crossing.

"When 100 feet from crossing, trains are visible 300 feet from crossing.

"When 50 feet from crossing, trains are visible 800 feet from crossing.

"Trains from the west can be seen as follows:—

"When 200 feet from crossing, trains are visible 125 feet from crossing.

"When 150 feet from crossing, trains are visible 600 feet from crossing.

"When 100 feet from crossing, trains are visible 800 feet from crossing.

"When 50 feet from crossing, trains are visible 1,000 feet from crossing.

"As this crossing is within the yard limits, trains are not running fast; and on account of the open view, I am of opinion that no protection is required at this crossing for the present."

On consideration, I am of the opinion that the Engineer's report may, until changed conditions, if any, warrant different action, be accepted, and that no direction in regard to the installation of protection need go at the present time.

April 30, 1925.

Commissioner Boyce concurred.

RE RATE APPLICABLE ON ALUMINUM WARE (PREMIUMS) WHEN ENCLOSED WITH ROLLED OATS IN CARTONS

Application of Robin Hood Mills Limited, Moose Jaw, Sask., for a ruling of the Board as to the proper rating under the reading of tariffs and classification as currently in effect on an article of aluminum ware placed as advertising matter in cartons of rolled oats.

File No.33753.

The application, as set forth in the applicant company's letter of March 10, 1925, is as follows:—

"The Canadian Freight Association, Winnipeg, have ruled that first class rate is applicable under classification and tariffs on aluminum ware premiums placed as advertising matter and thoroughly nested in cartons of rolled oats and this ruling has been passed along to us by the Canadian Pacific Traffic officials although in October last when we commenced to pack these aluminum ware premiums and ship them, we obtained ruling from the Canadian Pacific Traffic Department, Regina, that second class rate should apply on the grounds that the premium articles were thoroughly nested in the rolled oats and complied with the spirit of the classification.

"Our interpretation of section 140-A, supplement 9 to C.P.R. Tariff W-5251, C.R.C. W-2741 and item 3, page 4, supplement 19, classification 16, confirms the application of second class rate.

"You will find that section 140-A, page No. 5, supplement 9 to C.P.R. Tariff W-5251, C.R.C. W-2741, reads as follows:—

'Premium Articles for Advertising Purposes.—An article for advertising purposes may be shipped in the package of the commodity that it advertises, provided only one of such complete advertising article is contained in each package; the commodity shipped to be charged at actual weight, plus weight of package (subject to the established minimum carload weight, when in carloads) and at the rating applicable thereon; the advertising article to be charged at actual weight, plus twenty (20) per cent, at the less than carload rate on such article as per established classification and tariffs. In no case, however, shall the advertising article be charged at less than ten (10) per cent, of the gross weight of the package in which it is contained.'

"You will also find on referring to item 3, page 4, supplement 19, classification 16, that same reads as follows:—

' Item 3.	1.c.1.	c.1.
' Aluminum Articles, N.O.I. B.N.:		
Decorated or not decorated:		
' Not nested, in barrels or boxes.	1	—
' Nested, in barrels or boxes.	2	—
' In packages named, C.L., Min. Wt. 20,000 pounds.	—	4,

"and paragraph 'J' rule 14, page 50, classification 16, defines the term 'Nested' as follows:—

"*"Nested."* A series of similar articles nested or enclosed one within the other and fitting closely together, but not solid as prescribed in section (i).'

"Item 140-A referred to limits the premium article for advertising purposes placed in any one package to not more than one article. It also

makes applicable a weight of not less than 10 per cent of the gross weight of the package. The gross weight of our package is 47 pounds 8 ounces. Our aluminum ware, taking an average series of 12 pieces weighs approximately 9 ounces, i.e. 12 separate pieces in 12 separate cartons contained in one container weigh 9 ounces whereas under section 140-A referred to above we are required to pay a penalty weight of approximately 4 pounds per container or about 800 per cent penalty on the actual weight of the articles contained. This section also provides application of l.c.l. rate on aluminum ware shipped as premiums in cartons of rolled oats which are shipped as carloads, less carload rate to be as shown in current classifications and tariffs.

"On referring to classification 16 and current supplements thereto we cannot find any specific classification for aluminum ware premiums when placed as advertising articles in rolled oats but we do find in item 3, page 4 supplement 19 to classification 16 that aluminum ware nested in barrels or boxes taken second class rate, not nested in barrels or boxes first class rate, no reference made whatever as to classification when packed in rolled oats as advertising matter.

"Our contention is that as the major portion of this aluminum ware shipped inward is nested and takes second class rate under the classification, we are entitled to the second class rate outward as the aluminum ware is thoroughly nested in the rolled oats and complies with the spirit of the classification.

"We further consider that as the classification does not specifically cover aluminum ware shipped as premiums in cartons of rolled oats and specific reference to rate and classification is not given in tariff, that both classification and tariffs are ambiguous when applied to advertising articles as referred to and as such should be interpreted in case of shippers.

"We would further call to your attention the fact that we are already penalized 800 per cent on the weight of the aluminum ware where it moves in carloads of rolled oats. Further we cannot use the weight of the aluminum ware to make up minimum weight of car but have to ship 50,000 pounds rolled oats not only above actual weight of the aluminum ware in the car but more than the penalty weight as provided."

The matter was referred to the Chief Traffic Officer of the Board, whose report of March 25, 1925, is set out hereunder.

INFORMAL RULING

"It is noted that only one article of aluminum ware is enclosed in each package or carton of cereal. The tariff rule (in part, being that part which is relevant) and the classification provision for aluminum articles, N.O.I.B.N., are correctly quoted in applicants' letter.

"The tariff rule states that only one advertising article may be contained in each package, and that said advertising article is to be charged 'at the less than carload rate on such article, as per established classification and tariffs'. The advertising article here in question is a piece of aluminum ware. Applicants refer to it being 'thoroughly nested in the rolled oats', which means nothing more or less than that in the carton of rolled oats the article of aluminum ware is embedded, and so far as this advertising article is concerned it is in no different position than what it would be if the same article were to be placed in the same carton but simply held in place by excelsior or any other kind of packing material instead of by rolled oats.

"The definition of nesting in classification rule 14, page 50, is: 'A series of similar articles nested or enclosed one within the other and fitting closely together, but not solid as prescribed in section (i)'. The classification for aluminum ware articles contains a rating when not nested, of 1st class; when nested, a lower rating of 2nd class is provided, this reduction in rating being because of the fact that the nesting of a series of similar articles within each other furnishes a much more compact and weightier package for the space occupied than when the same articles are not nested or enclosed one within the other. The reduction in rating is made solely on that ground.

"The method of packing described by applicants complies neither with the wording nor intent of the classification rule, and the use of the word 'nested' to describe this method of packing would seem to be a misnomer.

"Applicants also allege that both the classification and tariff are ambiguous, because they do not provide specifically for aluminum ware shipped as premiums in cartons of rolled oats. Obviously, when framing a tariff rule of such general application the carriers could not have knowledge of all the different articles that shippers might decide to enclose as premiums with their cereals; further, the kind of article shipped as premium is constantly undergoing change, hence the necessity for a provision being made in terms that would embrace all. In making the tariff provision, however, I consider there is no ambiguity but, on the other hand, in my opinion the wording clearly conveys exactly what the terms and conditions are under which the advertising article may be included.

"The proper l.c.l. rating on an article of aluminum ware in a package of rolled oats, under the effective tariff and classification, is 1st class, because obviously it is not nested, and could not be, under the terms as defined in the classification rule."

The Board concurred in the opinion expressed by the Chief Traffic Officer in his report and adopted it as its informal ruling.

OTTAWA, May 4, 1925.

CIRCULAR No. 206

April 27, 1925.

Protection of water gauge glass mountings on locomotives by a strong cage made of aluminum or brass metal, fitted with heavy reinforced plate glass shields three-eighths of an inch thick, etc.

File No. 6948.5

I am directed by the Board to ask that you furnish, within thirty days of the date of this circular, a statement giving the number of engines equipped by your company, in compliance with General Order No. 389, dated January 21, 1924, and the number still to be equipped.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

ORDER No. 36297

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," for permission to amend its freight tariff C.R.C. No. E.-908, on less than statutory notice.

File No. 548.37

SATURDAY, the 25th day of April, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what has been submitted, and the recommendation of its Chief Traffic Officer; and in pursuance of the powers conferred upon it by section 325 of the Railway Act, 1919,—

The Board orders: That the applicant company be authorized to issue a supplement to its tariff C.R.C. No. E-908, effective April 27, 1925, for the purpose of correcting clerical errors made in the compilation of the original tariff, which is effective on the said date.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36311

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," for permission to cancel, on less than statutory notice, a special commodity rate established, effective April 16, 1925, on glass bottles, in carloads, from Hamilton to Leamington, Ontario.

File No. 490.2

SATURDAY, the 25th day of April, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been submitted; and upon its appearing that, through clerical error, there was published in item 192 of Supplement No. 134 to the applicant company's tariff G.T.R.-C.R.C. No. E-4748, effective April 16, 1925, a special commodity rate of 32 cents per 100 pounds on glass bottles, in carloads, from Hamilton, Ontario, to Leamington, Ontario, whereas it was not the intention of the applicant company to make any reduction in the current class rate; and upon the recommendation of its Chief Traffic Officer,—

The Board orders: That the applicant company be authorized to issue a supplement to its tariff G.T.R.-C.R.C. No. E-4748, cancelling the rate in question, as contained in item 192, upon three days' notice.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 415

In the matter of the General Order of the Board No. 289, dated March 24, 1920, prescribing the rules to be adopted by the railway companies subject to the jurisdiction of the Board, with regard to the inspection of locomotives and tenders.

File No. 21351

SATURDAY, the 25th day of April, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed on behalf of the New York Central Railroad Company, and the report and recommendation of its Chief Operating Officer,—

The Board orders: That the said rules relative to the inspection of locomotives and tenders, as approved by the said General Order No. 289, dated March 24, 1920, be, and they are hereby, amended by striking out the first paragraph under the heading "Draw Gear and Draft Gear," and substituting therefor the following, namely:—

"Draw Gear between Locomotive and Tender.—The draw gear between locomotive and tender, together with the pins and fastenings, shall be maintained in safe and suitable condition for service. The pins and draw bars shall be removed and carefully examined for defects not less frequently than once each three months. In the event of the locomotive being laid up one or more full periods of thirty days, the time for examination of pins and draw bars may be extended by the number of full thirty-day periods out of service. In the event of the examination coming due when a locomotive is out of service, such examination must be made just prior to the locomotive being returned to service. Suitable means for securing the draw bar pins in place shall be provided. Inverted draw bar pins shall be held in place by plate or stirrup. Report, properly certified, showing date pins and draw bar were removed for inspection, and their condition, shall be made on boiler inspection report of the month when the inspection is made."

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 36324

In the matter of the application of the Canadian Freight Bureau for a ruling of the Board with regard to the collection by the Canadian National Railway Company of an alleged undercharge on a car containing tomatoes shipped June 12, 1920, from Crystal Springs, Mississippi, on the Illinois Central Railroad, to Hamilton, Ontario, on the Grand Trunk Railway.

File No. 26963.67

WEDNESDAY, the 29th day of April, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been filed on behalf of the Canadian Freight Bureau, and the Railway Company, and the report of the Assistant Chief Traffic Officer

of the Board, and its appearing that the legal tariff rate on tomatoes, in car-loads, from Crystal Springs, Mississippi, to Toronto, Ontario, was, on the date of shipment, 88 cents per 100 pounds; that such rate was not indicated in the tariff as being competitive; and that Hamilton is an intermediate point to Toronto,—

The Board declares: That the legal rate on the shipment in question is 88 cents per 100 pounds.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36337

FRIDAY, the 1st day of May, A.D. 1925.

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of the location and details of its proposed station building at St. Albert, a point about midway between Chrysler and Cambridge Stations, about 29 miles from Ottawa, Ontario, as shown on the plan on file with the Board under file No. 33958.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Operating Officer, and the consent of the township of Cambridge, filed,—

The Board Orders: That the location and details of the applicant company's proposed station building at St. Albert, in the province of Ontario, as shown on the plan on file with the Board under file No. 33958, be, and they are hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36354

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, 1919, for approval of Supplement No. 1 to its tariff C.R.C. No. E-608, covering joint movements with the Montreal and Southern Counties Railway Company, on file with the Board under file No. 548.32.

WEDNESDAY, the 6th day of May, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Supplement No. 1 to tariff C.R.C. No. E-608, covering joint movements with the Montreal and Southern Counties Railway Company, on file with the Board under file No. 548.32, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

Railway Commissioners for Canada

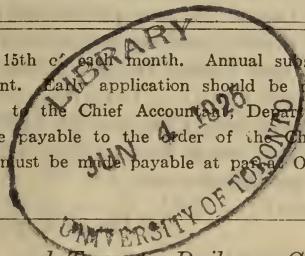
Judgments, Orders, Regulations, and Rulings

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Application of the Niagara, St. Catharines and Toronto Railway Company, in the matter of relocation of its line on Oak and Merritt Streets, Merritton, Ontario.

File 3025.16

Heard at Ottawa, Ontario, December 27, 1924.

JUDGMENT

COMMISSIONER BOYCE:

By Order of the Board No. 33190, after a hearing at Merritton, and for the reasons set forth in the judgment of the Board, dated November 27, 1922, reported in Board's Judgments, etc., Volume 12, p. 214, the Niagara, St. Catharines and Toronto Railway Company (a part of the Canadian National Railway System) was directed to commence the work of relocating its line on Oak and Merritt streets, in the town of Merritton, in accordance with paragraph 4 of a by-law, ratified by agreement of the company, entered into between the town of Merritton and the company, dated 14th and 23rd July, 1914, respectively, on or before the 15th day of March, 1923, continuously proceed with, and fully complete the same at its own expense, by the 1st day of May, 1923.

The order was not complied with, and has not been complied with, because the railway company differed with the municipality with regard to the extent of its obligations in connection with the work, as contained in the by-law and contract above referred to.

The interpretation of the contract and by-law, and the extent of the railway company's obligations thereunder, were not dealt with in the judgment above referred to, which directed the railway company to relocate its tracks, in accordance with the by-law and agreement, on or before a certain date. The dispute involving the delay in complying with this order centres around the construction to be placed upon those provisions of the by-law, which places an obligation before the railway company to relocate its tracks, in the event of the town of Merritton proceeding to pave the streets in question in a permanent manner. The main clause involved in the by-law and agreement is clause 4 of the by-law, which is referred to in the order, while there are other cognate clauses which may be looked to in order to guide one to the proper interpretation of what is specifically involved in what is agreed to in clause 4 of the by-law.

The railway company contends that its obligations, under section 4 and cognate sections, with regard to the relocating of its tracks, now that the municipality is proceeding to pave the streets in a permanent manner, have not been settled and must be settled before the order of the Board above referred to can be enforced, and as a result the relocation of the tracks has been delayed, with consequent inconvenience to the municipality in the paving of its streets, which the municipality contends has resulted in damages sustained by the delay, and which damages it contends the railway company ought to pay.

The railway company appealed from the Board's judgment and order above referred to, under the appropriate section of the Railway Act, to the Governor in Council, but it did not prosecute its appeal, which remains in abeyance, subject to the understanding in litigation, which is hereunder referred to.

A writ was issued by the town municipality against the railway company, in the Supreme Court of Ontario, claiming damages for the delay, and the action was brought to trial October 20, 1924, when Minutes of Settlement were filed by counsel for the respective parties, and which Minutes of Settlement, filed at the trial, read as follows:—

“ IN THE SUPREME COURT OF ONTARIO

“ Between:

“ *The Town of Merritton,*

Plaintiff,

—and—

“ *The Niagara, St. Catharines and Toronto Railway Company,*

Defendant.

“ The parties agree as follows:—

“ (1) The trial of this action shall stand adjourned until the next ensuing non-jury sittings of this court for the county of Lincoln, unless the Railway Board before such time have determined the matters in question between the parties under or arising out of the franchise and agreement between the parties, or unless the parties further agree.

“ (2) The defendants shall forthwith make application to the Board for determination that all questions in dispute between the parties under the said franchise agreement and the plaintiffs on such application shall be entitled to claim damages as alleged in this action.

“ (3) The decision of the Board shall be final and binding upon both parties without any right to appeal therefrom.

“ (4) Neither party shall be prejudiced in any way on such application by any proceedings at any time heretofore taken, and the Board shall be entirely free without reference to any former or other proceedings to finally dispose of and determine all matters in dispute.

“ (5) The defendants shall forthwith upon said application to the Board abandon all pending proceedings by way of appeal to the Governor in Council.

“ (6) Upon determination by the Board this action and all other proceedings shall be dismissed without costs.

“ Dated, October 20, 1924.

“ (Sd.) A. W. MARQUIS,
Counsel for Plaintiff.

“ (Sd.) R. E. LAIDLAW,
Counsel for Defendant.”

Under date November 18, 1924, counsel for the Canadian National Railway submitted the above situation to the Board, with a copy of the above

quoted Minutes of Settlement, and desired to submit to this Board's jurisdiction to interpret the agreement between the town and the railway company, in so far as it affected the matters in dispute, which delayed the execution of the Board's order above referred to, and stated his intention of making a formal application to the Board in terms of the Minutes of Settlement.

Counsel for the railway company was advised by the Board, in reply, under date November 20, 1924, that the Board would take no action upon the letter of the railway company above referred to. That should the railway company submit such an application the Board would give it consideration, having regard to all surrounding circumstances, and that in the meantime the Board would not commit itself, in any way, to any action upon such an application, if made, which would involve the assumption of a jurisdiction not vested in the Board by the Railway Act. That subject to this understanding, the Board would consider such an application, when presented, and express its views with respect to it.

Counsel for the railway company, Mr. Fraser, K.C., shortly thereafter advised the Board of his application and desire that it be heard, and in presence of counsel for the town of Merritton, Mr. A. W. Marquis, K.C., the application was presented to the Board, at Ottawa, December 27, 1924. (Volume 438 pp. 10010 *et seq.*)

Counsel for both parties specifically and unreservedly consented to the Board's assuming jurisdiction, if that jurisdiction was in question, to adjust, adjudicate upon and finally determine, in the following presentations to the Board on the record. (Volume 438; p. 10013):—

“COMMISSIONER BOYCE: Taking the initial feature, that is your application to this Board to take the matter up; as I understand it, you take this position; that by an order of the Board you are directed to remove your rails and put them in a position and under conditions as required by a certain clause in a certain agreement.

“Mr. FRASER: Yes, clause 4.

“COMMISSIONER BOYCE: That agreement has been the subject of litigation in the provincial courts, for damages, and with the consent of the provincial courts and upon your agreement that question is relegated to us to say just what that agreement means, in accordance with which you are to lay the tracks.

“Mr. FRASER: That is exactly the situation. Both parties have signed the Minutes of Settlement and the court approved and the action was therefore stayed, the court agreeing to allow the parties to refer the whole matter to the Board and we have agreed to accept the Board's judgment as final.

“The ASSISTANT CHIEF COMMISSIONER: That carries the fixation of damages as well?

“Mr. FRASER: Yes, all outstanding questions.”
(P. 10014-5):—

“Mr. FRASER: There might very well be some question of jurisdiction as far as the Board is concerned, but after all the minutes have received the approval of the court below.”

“The ASSISTANT CHIEF COMMISSIONER: So far as the parties are concerned, this is conferring jurisdiction by consent?

“Mr. FRASER: Yes, sir. It is an unusual procedure and I do not say how good it is, but anyhow, here we are.

“The ASSISTANT CHIEF COMMISSIONER: We understand the way it comes before us.

"Mr. FRASER: Yes.

"Mr. MARQUIS: There is no appeal from whatever decision the Board makes; if it is against us we will take our medicine; and we will expect the company to take theirs if it is against them.

"Mr. FRASER: Oh, yes, quite so. The matter is wide open. You will notice in paragraph 4 of the Minutes of Settlement: 'Neither party shall be prejudiced in any way on such application'—that is the present application—'by any proceedings at any time heretofore taken, and the Board shall be entirely free without reference to any former or other proceedings to finally dispose of and determine all matters in dispute.'

"Commissioner BOYCE: Under clause 1 of the Minutes of Settlement, provision is made for the postponement; 'Unless the Railway Board before such time have determined the matter in question between the parties.'

"Mr. FRASER: Under or arising out of the franchise agreement between the parties or unless the parties further agree. I am sorry to say I have not copies of the pleadings here.

"Mr. MARQUIS: I have them.

"Mr. FRASER: Very well. We can dispose of that record—if the Board deal with it, that will dispose of that application—by agreeing now to have that action dismissed, provided the Board will undertake to decide it.

"Commissioner BOYCE: That is provided the Board accepts the burden?

"Mr. FRASER: Yes.

"Mr. MARQUIS: If you will be kind enough to, that is about the only thing outside your jurisdiction we have asked you to handle for us, and if you will be good enough to do that, that will clean up everything and there is no appeal from your decision, no matter what it is.

"The ASSISTANT CHIEF COMMISSIONER: You have an appeal pending to the Governor in Council?

"Mr. LAIDLAW: That is provided for.

"The ASSISTANT CHIEF COMMISSIONER: Is that being withdrawn as well?

"Mr. FRASER: Yes, sir."

Pp. 10016-7:—

"The ASSISTANT CHIEF COMMISSIONER: In connection with this jurisdiction, I take it that it is thoroughly understood that in arriving at the sum of damages involved, it is open to us to use the services of our technical officers and be guided by them and their reports.

"Mr. FRASER: Absolutely, as far as we are concerned.

"The ASSISTANT CHIEF COMMISSIONER: I assumed that that would be so, but I wanted to be clear about it.

"Mr. MARQUIS: The amount is only about \$1,260. We are quite willing that the Board should do exactly what they please to arrive at the amount.

"Commissioner BOYCE: And wherever any other technical advice is necessary in the matter of interpreting the contract, it is understood that the Board may take the advice of its technical staff, as it might if the case were before the Board itself, and make examination of your

streets and of the *locus in quo*, should that become necessary, or desirable?

"Mr. MARQUIS: Yes, we will give you every facility if it becomes necessary."

Clause 20 of the by-law of the town of Merritton (No. 271, passed July 14, 1914), which contains the terms of the renewed franchise and by agreement dated July 23, 1914, was adopted as the agreement between the parties, and some of the terms of which are now in dispute, reads as follows:—

"20. All matters of dispute arising under this agreement may be referred by either party to the Ontario Railway Board, who shall hear all matters relating to an alleged violation of the terms of this agreement, and shall make such order as to it may seem just, as provided under the Ontario Railway Act, 1913, the provisions of which Act in so far as they do not conflict with the terms of this agreement, form part of this agreement, and are binding on both parties hereto."

At the date of the passing of the by-law containing this provision, the Niagara, St. Catharines and Toronto Railway Company subject to the jurisdiction of this Board, in consequence of its Act of Incorporation, 62-63 Victoria, Cap. 77, its undertaking being thereby declared to be a work for the general advantage of Canada, and by the provision in section 8, subsection 2, that all the provisions of the Railway Act shall apply to the company.

The provisions, therefore, of section 260 of the Ontario Railway Act, 1913, did not, and do not apply to the railway, and section 20 of by-law No. 271, therefore, provided for a voluntary reference to the Ontario Railway Board, at the will of the parties ("may"), and it is clear from the Minutes of Settlement of the action, as exemplified as to intention by the application to this Board, and the clear and unequivocal agreement as to the reference to this Board, that there is nothing in section 20 of the by-law, or in the Ontario Railway Act, 1913, section 260, to interfere with the voluntary reference to this Board of matters in dispute, if this Board decided that the circumstances were such that it should accept such a reference, or with the exercise, by this Board, of any jurisdiction it possessed under the Railway Act, section 35, to dispose of the matters in dispute under the agreement between the parties.

The Minutes of Settlement and the agreement of the parties at the hearing before the Board provide (a) for the abandonment of the appeal to the Privy Council from the Board's order; (b) for the dismissal of the action for damages in the Supreme Court of Ontario; and (c) the acceptance of any decision of the Board upon the matters sought to be referred to it, as final, conclusive, and unappealable.

The Order of the Board, No. 33190, was made upon application of the town municipality, under section 35 of the Railway Act, and the judgment of the Board was based upon that section, as the following extract therefrom (last clause but one) will show:—

"I think the case is one which may be dealt with under the jurisdiction conferred upon the Board by section 35 of the Railway Act. The railway company's obligation to relocate its tracks, etc., has been defined, proven, and is admitted. As Mr. Fraser pointed out, the section gives the Board judicial discretion to make such order as is reasonable and expedient. The principles involved have been already dealt with, by this Board, in the *City of Montreal v. G.T.R.*, 25 C.R.C., p. 448, but the agreement in this case is of a different character from that in question in the case cited, and is clearly distinguishable therefrom."

The questions as to the interpretation of any clause in the agreement and by-law, now presented and argued before us, were not raised on the application for the order above referred to, nor are they referred to in the judgment of the Board, or the order in question. The latter, as has been pointed out, directed that the work be done "in accordance with paragraph 4 of the said agreement, etc."

The Board is now asked to express its opinion upon the meaning of that and cognate and related sections of the agreement in the light of the contentions of the parties respectively as to the construction to be placed upon such section, or sections. As the whole substance of the dispute causing the delay in executing the Board's order is the construction, or interpretation, of the agreement, which the Board in the former application directed should be enforced, and it being clear by the unequivocal consent of counsel at the hearing that the reference asked was to this Board, and not to the Ontario Railway and Municipal Board, as stipulated in clause 20 of the by-law, I think that the jurisdiction conferred by section 35 of the Railway Act, with the consent of the parties as to the extent to which they desire it to be exercised for the purpose of determining all matters in dispute as to the execution of the Board's order, will enable the Board to exercise its good offices in the special circumstances presented, and that, as its own order enforcing the contract now sought to be interpreted, is in question, I think it is expedient to accept the reference asked.

Clause 4 of the by-law, adopted by the agreement, and which is the clause involving the dispute, reads as follows:—

"(4) The company shall maintain the ties, stringers, rails, turnouts, curves, poles, wires, etc., in a state of thorough efficiency and to the satisfaction of the village council or such person as they may appoint, and shall remove or replace the same as circumstances may require, and as the council or its representatives may direct, and put down in the portion between the rails and for eighteen inches on each side with the same class of material as is on the other portion of the street, or of such material as approved of by the council, which shall be kept up by and at the expense of the company. When any portion of the street upon which the tracks are now laid is to be paved in a permanent manner, on (of) concrete or other like foundation, then the company shall within thirty days from date of notice to do so, remove present rails and substructure, and replace the same in such location on centre of street or where the council or its representative may designate, according to the best modern practice, by improved girder rails with continuous joints and substructure of such description as may be determined upon by the village council as most suitable for the purpose and for the comfortable and safe use of the highway by those using vehicles thereon, and all changes in present rails, tracks and roadbed shall be done under the supervision of the representative of the village council, and at the expense of the company. It being further understood and agreed that the company shall keep the street crossing and that portion of Merritt street between said connecting switch (as hereinbefore mentioned) and their main line track in good repair, and free from all accumulation of dirt and snow, and in a manner satisfactory to the corporation, or its street superintendent."

Subject to the question as to whether the Board should accept the reference, counsel for both parties argued fully their respective contentions as to the interpretation of the clauses of the by-law involved, and upon all matters in dispute between them, and arising out of or incident to the Board's order, which were involved in the reference, and which the Board in accepting the reference is asked to adjust as between the parties.

These questions are set forth in a letter, dated December 2, 1924, from the town clerk of Merritton to Mr. D. E. Galloway, Assistant Vice-President, Electrical Department of the Canadian National Railways, filed at the hearing as Exhibit "A," and was referred to by counsel as the basis of the matters desired to be relegated to the Board for adjudication, and are the following:—

"(1) To have that portion of your road-bed from the town line (between Merritton and Thorold) to your station and from the concrete arch on Oak to Lincoln avenue, filled with crushed stone and for 18 inches on each side of track. The track to conform with the surface of the street.

"(2) That section eleven of your by-law be lived up to.

"(3) That the joints that are broken on that portion of your tracks through the main street now paved be repaired by having them welded.

"(4) That where your tracks have been moved over at the bend and have caused the embankment to slide down into the property of Mrs. Bradley (this was pointed out to you) a small concrete retaining wall be built with steps out of the property to the level and that the sidewalk be replaced from Bradley's to Ball avenue.

"(5) That the portion of the tracks from the concrete arch on Oak to Merritt street and from corner of Oak and Merritt streets to Canadian National bridge be placed in the centre of street and with improved girder rails and paved with the same class of material as that which will be put down on the other portion of the street by the municipality.

"(6) That the town be recompensed for all the outlay they have been put to for the past two years in the up-keep of this portion of the roadway and other expenses in trying to have your company live up to the order of the Dominion Railway Board, made in 1922."

Clause 5 of the above exhibit is the one most directly in issue, involving as it does the interpretation of the meaning of the clauses of the by-law and agreement dealing with the relative obligations of the parties. The other items are chiefly of an engineering nature. I will, therefore, first consider clause (4) and related clauses of the by-law.

The town of Merritton proceeded, as is evidenced by the Board's judgment upon which order No. 33190 was based, to pave the streets upon which, by its by-law franchise, the town had permitted the railway company to locate and maintain its line of railway. The railway was, and is, at the side of the street. The town corporation, under clause 4 of the by-law, requires, by clause 5 of Exhibit "A,"—

"That the portion of the tracks from the concrete arch on Oak street to Merritt street and from the corner of Oak and Merritt streets to Canadian National bridge, be placed in the centre of street and with improved girder rails, and paved with the same class of material as that which will be put down on the other portion of the street by the municipality."

The notice to the railway company required to be given under clause (4) of the by-law was duly given as found by the previous decision. The conditions have arisen for the town to call for the fulfilment of any and all obligations under the terms of the by-law imposed upon the railway company. "When any portion of the street upon which the tracks are now laid is to be paved in a permanent manner on (I think this was intended for "of") concrete or other like foundation, etc. (clause 4). The "permanent" pavement is to be concrete.

Clause 4, when analyzed, appears to provide for two separate and distinct conditions, viz:—

(a) The first part; from the commencement down to the words "the company," where those words appear for the second time in the clause, and just before the first period, is intended to provide for the maintenance by the company of its railway in relation to the street on which it was then laid, in a manner satisfactory to the municipality, and having regard to street surface and conditions as they then existed. This portion of the section does not, in itself, make any specific provision for the obligations of the company in the event of permanent change by the municipality in the pavement of its streets. The streets were then macadamized, the railway was on the side of the street, and, I think that this portion of the clause (4), distinct as it is from the latter portion, provides for the maintenance, while the railway remained on its present location, at the side of the street, paved in macadam, which, in view of the second part of the clause was contemplated as temporary, as distinguished from the "permanent" surface, or paving, which is a contingency evidently in contemplation and to be provided for, but not provided for in this part of the section. Had the section ended with the first part of it now referred to, it might be arguable that the words "and shall remove or replace the same as circumstances may require, and as the council or its representatives may direct, and put down in the portion between the rails and for eighteen inches on each side, with the same class of material as is on the other portion of the street, or of such material as approved of by the council, etc.," were sufficiently comprehensive to impose upon the company an obligation to move its tracks and replace them, and pave in conformity with the paving of the street as such paving might be changed from time to time; as it is, the word "paving" does not occur in the first part of the section at all, the word "material" being used, and there following a provision as to paving "in a permanent manner," it is. I think, in conformity with sound canons of construction that the particular words surrounding and circumscribing obligations to be incurred upon the happening of a particular (and future) event, where those words are, in themselves, clear, specific and self explanatory, should be looked to in construing the clause, and endeavouring to arrive therefrom at the intention of the parties. My view, therefore, is that the first part of the section is quite distinct from the second. The first evidently refers to the then present conditions, and obligations as to maintenance of the railway to conform to them, it being contemplated, in adding the second part, that these conditions might be changed by the adoption of a "permanent" street paving.

(b) The second part, which immediately follows the period that closes the first part, commences with the words: "*When* any portion of the street upon which the tracks are *now* laid is to be paved in a permanent manner, on concrete or other like foundation, then the company shall within thirty days from date of notice to do so, remove present rails and substructure, and replace the same in such location on centre of street, or where council or its representative may designate, according to the best modern practice, by improved girder rails with continuous joints and substructure of such description as may be determined upon by the village council as most suitable for the purpose and for the comfortable and safe use of the highway by those using vehicles thereon, and all changes in present rails, tracks, and roadbed shall be done under the supervision of the representative of the village council, and at the expense of the company. It being further understood and agreed that the company shall keep the street crossing and that portion of Merritt street between said connecting switch (as hereinbefore mentioned) and their main line track in good repair, and free from all accumulation of dirt and snow, and in a manner satisfactory to the corporation, or its street superintendent."

The opening word "*When*" is used substantively (as distinguished from the word "*now*"), and introduces, and the following words of the paragraph

purport to provide for a different, or alternative condition of things contemplated to arise, and which differs from that under which the tracks "*now*" exist with the obligations incident thereto. It separates clause 4 into two parts, the first providing for the then present and existing (perhaps temporary) condition of things, the second for a contemplated period, or eventuality "*when*" other conditions, of a permanent nature, shall take the place of the former, and fixes upon and provides for the obligations of the company incident to each. Those obligations, applicable "*when*" the street is to be "*paved in a permanent manner,*" are as follows:—

(1) To remove present rails and substructure, and replace the same in such location on centre of street, or where the council may designate, according to the best modern practice, by improved girder rails with continuous joints and substructure of such description as may be determined by the council, as most suitable for the purpose, and for the comfortable and safe use of the highway by those using vehicles thereon.

(2) All changes in (a) present rails; (b) tracks, and (c) roadbed, to be done under the supervision of the council and at the expense of the company; and

(3) To keep the street crossing and that portion of Merritt street between the connecting switch, thereinbefore referred to, and the company's main line track, in good repair, and free from all accumulations of dirt and snow, to the satisfaction of the council, or its superintendent.

If there is any obligation upon the company to comply with the demand of the council expressed in clause 5 of Exhibit "A" to pave, "*with the same class of material as that which will be put down on the other portion of the street by the municipality,*" when moving its tracks to the centre of the street, that obligation must be found in the latter part of clause 4 of the by-law just referred to, and not, I think, in the former part of that section. I shall refer, as we were pressed to do, to any cognate or related sections of the by-law which may be opposite in explanation or confirmation of this part of clause 4, but whatever the specific obligations of the company may be, are, I think, to be found in that part of clause 4.

The paving, in a permanent manner, of the street on which the railway line is located, is a matter, primarily, entirely for the municipality. The railway is located, by leave of the municipality, under a by-law, on its roadbed, it is required there to operate and maintain itself. It is lawfully there at the side of a macadamized street, on the conditions of the by-law. The obligation to pave the street is a municipal one entirely, and in the absence of a very definite agreement dealing with related conditions, that duty cannot be imposed upon any other person, or corporation, in whole or in part. In this case, *quâ* the street as macadamized, the company had, by agreement, to assume certain specified duties involving the maintenance of its railway upon the street as then constructed. The town council decided, as it contemplated it might do when making the agreement, to pave the street in a permanent manner upon a substructure of concrete, and surfaced with cement or similar suitable covering, thereby, in any case disturbing the substructure of the railway by changing its foundation from gravel to concrete. It provided for such a contingency in the agreement and by-law, in the terms of the latter part of clause 4, and if it was ever intended that the railway company should be under an obligation to pay the cost of the permanent paving on that part of the street to which it was required to move its tracks, that obligation cannot be inferred by extension of any language used, but must be plainly apparent from the express words used in the agreement. In other words, if the municipal council claims that the company is under an obligation to pave, in a permanent manner, any portion

of its streets, not now occupied by the railway, but to which, for the convenience of the municipality, the railway may have to occupy, there must be an express agreement casting such duty upon the railway, not one, I think, that can be inferred.

It is to be observed that while the company's franchise rights under the agreement, for which it pays five hundred dollars per annum to the council, expire on the 23rd July, 1929, the life of the permanent pavement, to the cost of which it is asked to contribute, will be twenty-five or thirty years, or probably twenty or twenty-five years beyond the limit of its present franchise.

Then the decision of the council to permanently pave the street involves upon the company the obligation "to remove the present rails and substructure, and replace the same in such location on the centre of the street, or where the council or its representative may designate, etc., etc." The present "substructure" of the railway is gravel, if I understand the term, "An understructure or foundation, as opposed to superstructure," and it would be quite reasonable to expect that the substructure upon which the rails rest should be removed in order that the municipality should be able to place its permanent concrete foundation of broken stone and concrete in its place. The substructure and those rails (indicated in the agreement, clause 4, as "the same") are to be replaced in the centre of the street as designated by council, "by improved girder rails with continuous joints and "*substructure*" of such description as may be determined by the council, etc. There is not a word in this clause as to pavement, or superstructure, the word "*substructure*" being used, as indicating that the railway's obligation as to its substructure shall be to change it, to conform to the substructure of the permanent pavement, and by this clause, the obligation goes no farther than that. The words following in the clause, "and all changes in present rails, tracks and roadbed, shall be done under the supervision of the representative of the village council, and at the expense of the company" give no extended meaning. They are incidental only to what has gone before and provide merely for supervision and cost of "the changes" already provided for. The use of the word "roadbed" here is no more than an interchangeable term for "*substructure*" used in the preceding sentence of the clause, and, from the context, can have no more extended meaning than "*substructure*," or "the bed, or prepared ground, or foundation, upon which the rails are laid." The rails, which are required, would be seven inches in height, and, therefore, would, on a street, require to be filled up to the surface, seven inches with the concrete material flush with the street pavement. For all that is contained in clause 4 of the by-law, the obligation for such filling, above the substructure, is not imposed upon the railway company, but remains with the town council in common with its duty as regards the whole street.

We were referred to the clauses of the by-law for evidence of intent in clause 4. They are as follows:—

"(5) In the event of the company desiring to make any repairs or alterations to the ties, stringers, rails, curves, etc., on any portion of the line, the company shall repave or macadam the portion of the roadway so torn up at its expense."

This clause does not, I think, affect the construction I place upon clause 4. It provides for a different condition of things, viz: where the company desires to make any repairs or alterations, etc. Clause 4 provides for a condition of things whereby, upon service of a notice, the company is *compelled* to change the location of its tracks, etc., and the condition and obligations incident to such a change are imposed as above.

"(13) Whenever it is deemed advisable and necessary by the council to notify the company to change the present location of their track

to the centre of the street as hereinbefore specified, the company must immediately do so and remove all old rails and ties, and put in such suitable material to replace the same as may be approved of by council."

This clause does not interfere with or vary the wording, and consequent obligations, in clause 4, latter part. It does not purport to do so. It relates to another condition of things, viz: the removal of the old rails and ties, and the substitution thereof of such "material," not "substructure" as may be approved by the council. While it refers to the conditions dealt with in the latter part of clause 4, it does not vary it. As Mr. Marquis says—p. 10040—"It is a sort of second gun." There is no specific obligation created in this clause either as to substructure or paving and none is to be inferred from it. It does not oblige the company, in any of its terms, either to re-lay the substructure of the street, or to surface it. The "material" is "to replace the same," i.e., the old rails and ties, on the new site in the centre of the street, and the only obligation I can see created is what is contained in the latter part of clause 4. If anything further was intended, as regards the old site, the clause (13) fails to define it.

"(10) The company shall indemnify and save harmless the corporation at all times for loss, damages, costs, charges and expenses of every nature and kind whatsoever which the corporation may incur, be put to or have to pay by reason of the exercise by the company of their powers or any of them, or by reason or neglect by the company in the execution of their works or any of them, or by reason of the said works becoming unsafe or out of repair, or by reason of the water pipes or sewer pipes of the corporation being, or running under any of the streets upon which the right to construct the said line of railway is hereby granted becoming damaged or injured by electrolysis of the influence of the electric power or current used in operating the said line of railway, or by reason of the neglect or failure of the company to remove any ice or snow, which it is their duty to remove, under the provisions of this by-law, or by reason of the neglect, failure, or omission of the company to do or permit anything contained in this by-law to be done by them; and should the corporation incur, pay, or be put to any such loss, damage, costs, charges, or expenses, the company shall forthwith upon demand repay the same to the corporation."

Neither does this clause in any way purport to vary clause 4. It is a general clause.

Mr. Marquis argued that the company had recognized its obligations to pave by doing so in 1914, when it paved between the rails and for 18 inches on each side. He referred to decision in *Murray v. Taylor* (1850), 8 Hare 51, at p. 56, cited with approval in Halsbury's laws of England, in the following language:—

"Acts done under an agreement may be material as evidence of facts existing at the time of the agreement and therefore relevant to its interpretation as part of the surrounding circumstances, but are not admissible to construe the argument itself."

In the first place it is not shown that the acts done in 1914 could be attributed to the agreement now in force, and which became effective in the latter part of that year. Again, where, as in this case, plain and unequivocal language has been used in a contract to evidence the intention of the parties as to obligations, the agreement should, if possible, be construed according to the intent apparent in the language used, the surrounding circumstances only being looked at to clear up any ambiguity of meaning in the language used.

That would be interpretation of the agreement. In the present case, as I have pointed out, I think the language used is clear, plain and unequivocal, and will admit of no such construction as the town municipality urges should be placed on it. We have not to go farther then, or outside the agreement, to find out the intent of the parties. The conduct of the company in 1914, pointed out by Mr. Marquis, may, or may not, be attributable to this agreement. In the opinion that I form of clause 4, it is entirely inconsistent with it, and it being undetermined as to whether this agreement was then in force, it can have no bearing on the construction of the agreement. No case for estoppel by conduct is made out. The most that can be made of the incident is that if the company did, under this agreement, what Mr. Marquis contends it did, it did what it was under no obligation to do, but in so doing, I think, it cannot, in the circumstances be deemed to have waived its contractual rights. In any case, as I understand this reference to the Board, it is to construe the contract, and adjudicate on matters arising therefrom, not to determine how far the conduct of either party thereto, outside of the contract, may fix upon it obligations not covered by the contract itself.

As to clause 4 of the by-law, therefore, I am of the opinion that the company is under no obligation to do more in the shape of construction than, at its own expense, to move its tracks to the centre of the street; replace them on a substructure required by the council, by improved girder rails with continuous joints, all according to the direction of the town council, or its representative, and that it is the duty of the municipality, at its own expense, and as part of the general paving scheme, when the new rails, so approved, are placed upon the new substructure, on the new location so approved, to do all other work to complete the pavement in conformity with its specifications, from the base of the rail so laid, or surface of the substructure, to and including the surface of the street.

The company's obligations, of course, extend to performance of all other items in clause 4, of the by-law and in all other clauses not in dispute.

Requisition No. 6 of the letter, Exhibit "A," hereinbefore referred to, may now be considered. It has already been included in the quotation from that exhibit.

In the view that I take as to the construction of clause 4 of the by-law there is not much to be said as to this claim which is for damages caused to the municipality by the delay, or refusal of the company to perform the duty imposed upon it by Board's order No. 33190. This delay it is shown was due entirely to the refusal of the company to comply with the municipality's view as argued before us by its counsel, and agree to pave between its tracks and to the level of the street, of the same material as the municipality was laying down as permanent pavement. As I am of opinion that the municipality's contention is not, and was not, warranted by the construction to be placed upon clause 4, the railway company is not responsible for damages for the delay, and this claim will, therefore, be disallowed.

Items Nos. (1), (2), (3) and (4) of Exhibit "A" remain to be dealt with. As these involved mainly engineering features, the Chief Engineer of the Board, in accordance with the consent of the parties on the record, visited Merritton, on notice to the parties, and went fully into these, and reported to the Board thereon.

His report is as follows:—

"The matters in dispute are set out in Mr. Clark's letter to Mr. Galloway, dated December 2, 1924.

"(1) To have that portion of the roadbed from the town line between Merritton and Thorold to the company's station, and from the concrete arch on Oak street to Lincoln avenue filled with crushed stone, and for

eighteen inches on each side of the track, the track to conform with the surface of the street."

"As to the portion of the railway from the town line to the station, the track is close to and parallel with the pavement, the tops of the rails being on a level with the pavement and the ends of the ties close to the edge of the pavement." If the railway track were not there at all, the town would no doubt place a strip of crushed rock or gravel along the edge of the pavement, but it would not put it in to the width it is asking of the railway. I think it would be reasonable to require the latter to fill in between the pavement and the rail and over as far as the centre of the track, as shown roughly on the section herewith.

"From the concrete arch to Lincoln street the road runs along a hill-side, the track being between the road and the water. The road is narrow, and the town requests that the railway keep the strip, occupied by its track, graded up so that it may be used readily by vehicles. I think this is a reasonable request.

"(2) That section 11 of the by-law be lived up to. The by-law provides that 'On that portion of the line from Disher street, the company shall place a guard rail along that portion of their track, and also erect a strong efficient guard or railing of sufficient height to protect the cars and vehicles from going over the embankment, said railing to be of sound, good and strong material capable of standing a heavy pressure, and to be properly built and painted as directed by the council.'

"I was informed that, now that the province has constructed another road between Merritton and St. Catharines, and that the traffic on the road under discussion (known as Thorold road) is not heavy. This part of the line is a portion of the line described above as lying between the concrete arch and Lincoln street. On the south side of the track the ground falls sharply away to the water and it would be impracticable to erect such a fence without going to a heavy expense. In view of the light traffic on the road I do not think this guard fence necessary.

"(3) That the joints that are broken on that portion of the track through the main street, now paved, be repaired by having them welded. The fastenings at the rail joints appear to have become loosened, and the ends of the rails work up and down as the cars pass over, thus disintegrating the pavement. I think the request that these joints be repaired a reasonable one.

"(4) As to Mrs. Bradley's property, it does not appear that a new wall is necessary at present, but I suggest that the portion of the track opposite her entrances be filled in and the track cleaned up and made tidy."

I agree with Mr. Simmons' conclusions and would adopt them as the judgment of the Board.

This disposes of all that was submitted to the Board, and, I trust, clears up all questions between the parties which have caused delay in complying with the Board's Order No. 33190. It is much to be desired that the work should now go forward with the utmost despatch.

As the Board's functions in dealing with these matters are, to a certain extent, extra-judicial, no order will be necessary. Should the necessity for one arise, either party may apply for further directions.

OTTAWA, April 30, 1925.

Assistant Chief Commissioner McLean concurred.

Re Freight Rates on Crowsnest Commodities

Complaint of the Corporation of the City of Brantford that the Freight Schedules filed and published by the Canadian Pacific Railway Company and the Canadian National Railways, under date of July 7, 1924, unjustly discriminate against and do make or give an undue and unreasonable preference against the City of Brantford and individuals, firms and manufacturing companies, shippers at Brantford.

File No. 32812.8

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner:*

Complaint has been made to the Board that the freight schedules filed and published by the Canadian Pacific Railway Company and by the Canadian National Railway Company, under date of July 7, 1924, unjustly discriminates against the city of Brantford, and against individuals, firms and manufacturing companies, shippers at Brantford.

The matter was heard at a sitting of the Board held in Toronto on March 20, 1925, at which counsel appeared representing the complainant, as well as the city of Toronto, the Toronto Board of Trade, the city of Hamilton, the Hamilton Chamber of Commerce, the Canadian Pacific Railway Company and the Canadian National Railway Company.

Mr. Henderson, K.C., for the complainant, the city of Brantford, in his argument before this Board relied upon the judgment of the Supreme Court of Canada in the Crowsnest Pass rates case and that the rates named in the Crowsnest statute and agreement have been made applicable to certain points on the line of the Canadian Pacific Railway Company, instancing the cities of Toronto and Hamilton, and have been denied to the city of Brantford. Inasmuch as such rates have been, in his opinion, voluntarily accorded to Toronto and Hamilton, he claims that an unjust discrimination has been thereby created in favour of the two latter cities, as against the city of Brantford, the complainant herein.

In answer to the questions submitted by this Board to the Supreme Court, it is clearly pointed out that the rates provided for in the Crowsnest Pass agreement are not applicable from all points east of Fort William now on the Canadian Pacific Railway, but such rates are "confined to westbound traffic originating at Fort William and at such points east of Fort William as were at the date of the passing of the Act, and (or) the making of the agreement on the company's line of railway"—(answer to question 2 (a)).

And in answer to question 2 (b) the court further said that "in order that the traffic provided for by clause (d) should fall under that clause, it must originate at Fort William or some point east thereof which, at the date of the agreement, was 'on the company's railway.'"

There is no ambiguity or uncertainty attaching to the above answers. It is admitted by counsel for the complainant that the city of Brantford is not entitled under the judgment of the court to the preferences given under the Crowsnest Pass agreement as a consequence of said judgment; but he contends also, that neither Toronto nor Hamilton has any such right, and that the Canadian Pacific Railway Company is now extending these preferential rates to Toronto and Hamilton although not obliged to give them. Consequently, he argues they are voluntary rates as far as Toronto and Hamilton are concerned, and being such, he contends that an unjust discrimination is thus created in favour of Toronto and Hamilton as against the city of Brantford, and that it is the duty of this Board to remove such discrimination.

The whole dispute therefore centres around the question, whether or not the cities of Toronto and Hamilton are entitled to the preferential rates under the Crowsnest Pass statute and agreement. If they are so entitled, it is admitted on all sides that it is not open to the city of Brantford to say that such discrimination is unjust, because, being statutory, such discrimination cannot be so regarded. But if, on the other hand, Mr. Henderson be correct in saying that such rates are voluntary, in the sense that the railways are not compelled, under the judgment of the Supreme Court, to give them to Toronto and Hamilton, it must, I think, follow that such discrimination is unjust and should be removed, because, unquestionably, it is a grievous and heavy handicap against Brantford industry.

The decisive question is, whether Toronto and Hamilton were on the Canadian Pacific Railway Company's line in 1897. To decide this, we must understand just what constituted the company's line of railway at the time the agreement was entered into.

By section 15 of its Act of incorporation, the Canadian Pacific Railway Company was empowered to "lay out, construct, acquire, equip, maintain and work a continuous line of railway . . . from the terminus of the Canada Central Railway, near lake Nipissing, known as Callandar Station, to Port Moody, in the province of British Columbia," and to acquire and construct branch lines to be located from time to time, all of which, that is to say, the main line above indicated and the branch lines "together with such other branch lines as shall be hereafter constructed by the said company, and any extension of the said main line of railway that shall be hereafter constructed or acquired by the company, shall constitute the line of railway hereinafter called the Canadian Pacific Railway."

The city of Toronto is not on the projected main line of the railway company as the same is described in section 15 of the company's act of incorporation. By chapter 54 of the Acts 47 Victoria (1884) it is shown that Toronto's connection with the line of the Canadian Pacific Railway Company is derived from the fact that by indenture executed in January, 1884, the Ontario and Quebec Railway Company did demise and lease to the Canadian Pacific Railway Company, in perpetuity, its line of railway extending from the city of Montreal to the town of St. Thomas, in the province of Ontario, and Toronto was, and is, on that line. So that when the Crowsnest Pass agreement was enacted, the conditions of affairs in this particular was, that the city of Toronto was on a line theretofore acquired by the Canadian Pacific Railway Company.

Consequently, I have no difficulty in coming to the conclusion that the city of Toronto is entitled to the rates provided in the Crowsnest Pass Act and agreement.

Turning now to the city of Hamilton, the railway situation there, at the time the Crowsnest Pass agreement was entered into, was that agreements had been made between the Grand Trunk Railway Company and the Canadian Pacific Railway Company which, *inter alia*, the Grand Trunk Railway Company had leased to the Canadian Pacific Railway Company, its successors and assigns, for a period of fifty years from the 13th day of May, 1896, the right to use the lessor's railway, roadbed, track and all appurtenances and fixtures, unrestricted and unencumbered, in conjunction with the Grand Trunk Railway Company, from the city of Toronto to Hamilton Junction, a distance of about $1\frac{3}{4}$ miles west of the city of Hamilton, for a yearly consideration named in said agreement.

It also appears that the Canadian Pacific Railway Company had acquired running rights, or complete control, over a line of railway from Hamilton Junction aforesaid into the city of Hamilton, wholly apart from the Grand Trunk

Railway Company's line. Consequently, at the time material to this application, the Canadian Pacific Railway Company's line of railway extended from Toronto and Hamilton, whereby Hamilton became and was a point on the Canadian Pacific Railway Company's line and entitled thereby to the benefit of the Crowsnest Pass rates.

I have, therefore, come to the conclusion that, for the purpose of this application, both the city of Toronto and the city of Hamilton are entitled to the reduced rates now accorded them by the railways, and being so, it now becomes necessary to give consideration to the claim of the city of Brantford for such rates, and to contrast its position with that shown to exist in regard to the two other cities named in this application.

At the date when the Crowsnest Pass agreement was entered into, the city of Brantford had no connection whatever with the Canadian Pacific Railway. Its trains did not run into Brantford, and from no standpoint, as far as I can see, can it be claimed that the last named city was at that time on the Canadian Pacific Railway Company's line of railway.

Undoubtedly, the serious discrimination complained of exists, but it is authorized by the Crowsnest Pass statute and agreement. Consequently, no relief can be afforded at the hands of this Board, and the application must be dismissed.

OTTAWA, May 7, 1925.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The matter involved being a question of law, the opinion of the Chief Commissioner, who presided, prevails under section 12, subsection 2.

May 8, 1925.

Application of the Municipal Corporation of the Township of King, Ont., for leave to extend Bond Avenue across the railway controlled by the Hydro-Electric Power Commission of Ontario, and known as the Schomberg and Aurora Railway, to Yonge Street.

File No. 33258

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner:*

The Municipal Corporation of the township of King, Ontario, asks authority of the Board to extend a highway, known as Bond avenue, across the Schomberg and Aurora Railway, to connect with Yonge street. Bond avenue runs into Bostwick avenue, and access to Yonge street is now had by travelling in a southerly direction, a distance of somewhat over 400 feet along Bostwick avenue, where it then merges into Yonge street. If the suggested change is effected, traffic to and from Bond avenue can cross Bostwick avenue and then cross the line of railway above mentioned, striking Yonge street nearly at right angles.

The reasons urged for making the change are, that the road from the corner of Bostwick avenue and Bond avenue to Yonge street, at times, is in a bad condition and a very considerable grade intervenes; that at the point where Bostwick avenue merges into Yonge street a sharp turn is necessary for travellers going northward; and that at the juncture of Bostwick avenue and Yonge street a row of trees obstructs the view, and their presence is mentioned as an element of danger.

It was pointed out that there is considerable northbound traffic from Bond avenue, and the proposed change would facilitate it by avoiding the sharp turn at the corner of Bostwick avenue and Yonge street, as well as by shortening the distance somewhat. It is not proposed to close the existing highway from the corner of Bond avenue and Bostwick to Yonge street, for the change so urged is in the peculiar interest of travel to and from the north. As far as the southern traffic is concerned, it would probably continue from Bond avenue by way of Bostwick avenue to Yonge street, and traffic from the south to Bond avenue would probably use Bostwick avenue as at present.

Evidence was directed to show that Bond avenue traffic to and from the north is greater in volume than to and from the south. The post office for the district is located at the corner of Bostwick avenue and Bond avenue. It serves twenty-five families—about ninety-five people. Those using it would, in case the suggested change be made, make their turn into Bond avenue direct from Yonge street, instead of proceeding along Yonge street to its junction with Bostwick avenue, and then turning sharply to the right and going northward along Bostwick avenue to the post office. And it was further shown that, as far as pedestrian traffic is concerned, much use is now made of a footpath crossing the railway property near where the change is asked.

The railway company opposes the motion on the ground that the projected crossing will be a dangerous one, and that its yard space will be curtailed.

From the evidence given by the witnesses, it is proved that the portion of Bostwick avenue which lies between Bond avenue and Yonge street is not in the best condition; there is a steep grade there; at times the roadway is very muddy, and trees somewhat obscure the view so as to render the turn into Yonge street dangerous. But this is a condition which can easily be remedied by the highway authorities, and it is a matter for their consideration. If the portion of Bostwick avenue between Bond avenue and Yonge street is repaired, and put in good condition, and the obstructions removed, the only appreciable advantage resulting from the change would be the saving of a distance, said to be some 900 feet, for Bond avenue traffic to and from the north.

In view of that fact and general conditions, I do not feel that the present volume of traffic justifies the change, nor that conditions are such as to make it necessary to deprive the railway company of land which its officials say is needed for business purposes. I am of the opinion that this application should be dismissed.

OTTAWA, May 9, 1925.

Assistant Chief Commissioner McLean concurred.

Complaint of the Corporation of the District of Saanich, B.C., and the Cadboro Bay Committee, Cadboro Bay, B.C., re proposed extension of the Gordon Head Telephone Exchange by including the Mt. Tolmie and Cadboro Bay Districts, British Columbia Telephone Company.

File No. 32560.3

MEMORANDUM BY THE CHIEF COMMISSIONER, HON. H. A. McKEOWN:

I have read over the evidence submitted, as well as the papers filed in this case. The proceedings were instituted by filing a copy of a resolution passed by the Council of the Corporation of the District of Saanich, in which it went on record as opposing a proposed change in connection with the British Columbia Telephone Company in the districts surrounding the city of Victoria.

Under instructions from Dr. McLean, a letter was written to Mr. Sewell, who forwarded the complaint, advising him that the Board is unable to make any direction to prevent changes in telephone exchange area. I think this instruction was correct and quite in accordance with the procedure followed by the Board. Further communications were exchanged between the Board and the municipality and the telephone company, which resulted in the matter being set down for hearing under instructions from the late Chief Commissioner, and when it came up for consideration before the Board at Victoria in June, 1924, in the evidence submitted, the complaint developed into a protest against the rates; the question of the propriety of change of districts was not followed up, and all parties seem to have acquiesced in treating the hearing as having to do with the rate charged, or to be charged, for the use of telephones; and upon that ground the intervention of the Board was sought. After considerable evidence had been given and argument made on both sides, the matter was summed up thus:—

“The ASSISTANT CHIEF COMMISSIONER: Is not this what it comes to? In the discussion there are two factors: One is the local rate of \$1.50, and the other is the admission of what will be the effect in the future, and the applicant putting it forward states that taking the rate plus what the usual calling has been, or what their anticipation of the calling business will be, that the two will give a higher rate between their sections and Victoria than they are paying at present.

“Mr. McPHILLIPS: That may be so. I cannot refute that.

“The ASSISTANT CHIEF COMMISSIONER: That is the essence of what they are saying.

“Mr. McPHILLIPS: Yes. But I am saying I do not care where you make the division, you will have someone who will be able to make that case. Now is that a case of the division or of the rate? My submission to you is that in every case like that it is a case of division and not of rate.

“Commissioner OLIVER: If there is no question of rate, all you have to do is to give these people their single call under their flat rate.

“Mr. McPHILLIPS: I do not understand that, sir.

“Commissioner OLIVER: I say if there is no question of rate, all you have to do is to make your division as you please, but give them their single call as a part of that rate, if there is no question of rate.

“The ASSISTANT CHIEF COMMISSIONER: The objection to the division is that they think a necessary consequence of it will be a greater burden of rate charge.

“Mr. McPHILLIPS: I am admitting that. I say that will occur in any division you make.

“The ASSISTANT CHIEF COMMISSIONER: Then are we not getting off on a metaphysical distinction when you say it is not a rate question. What is being talked about is the rate burden or charge resulting from a division of territory.

“Mr. McPHILLIPS: That may be. I am admitting that that may be so in any division we may make.

“Commissioner BOYCE: They say you can make what division you like, in accordance with the best judgment of the management of your company, but do not increase our rates by so doing.

“Mr. McPHILLIPS: Yes, but have they a right to say that?”

At page 4662:—

"The ASSISTANT CHIEF COMMISSIONER: Then that is really the essential thing—the change of rate?

"Mr. SEWELL: Yes, I think that is the essential thing."

At page 4664: Mr. Aldous (first witness called) stated:—

"On May 13, Mr. Chairman, I wrote to the Board of Railway Commissioners on this matter of the telephone company. Before reading this letter, I quite understand that your Board deals entirely with matters of rates; you have advised me on that point, and although there are many other reasons for our objections in this matter, I will try to stick to the point of rates, and I will ask you to listen to our petition impartially."

The case being left in the above shape, I think it is a question of fact which is involved, having to do with the reasonableness of the rates charged, and must be determined by the Commissioners who heard the evidence.

I quite agree with the view expressed by the Assistant Chief Commissioner, that we have no jurisdiction over the telephone company in respect of any rearrangement of exchange areas which it might determine, and if that were all that is involved in the present application it should be summarily dismissed. But, admitting that the Board has no authority over that feature of this application (which seems to have been dropped at the hearing), there still remains the question of the reasonableness of the rates charged, and I am not aware of any case which denies the Board's right to determine that matter. In the judgment of the Town of Dundas *et al. v. Bell Telephone Company*, Board's Judgments and Orders, Vol. XI, p. 83, it is stated: "While in the case of the other districts affected, criticism was made that the revision would affect revenues, the toll proposed to be charged between the rearranged portions of what was hitherto a common district was not attacked as unreasonable." I think this is the point which distinguishes the present case from the one from which this quotation is made, and others cited in the judgment. For instance, *Tinkess v. Bell Telephone Company*, in which, at p. 255, the judgment states: "The rates charged are not attacked." In other words, I think if a rearrangement of district involves an increase of rates, while the right to effect such rearrangement cannot be questioned by this Board, nevertheless the jurisdiction to supervise the reasonableness of the rates as so increased still abides with us. Consequently, dropping the question of rearrangement of exchange areas altogether, I think the Board should determine the reasonableness of the rates proposed to be charged.

OTTAWA, January 17, 1925.

MEMORANDUM BY THE CHIEF COMMISSIONER:

The hearing in this matter was held on June 25, 1924, before I became a member of the Board. A difference of opinion having developed between the members of the Board who heard the case, I was requested by them to express my opinion upon the points at issue between them, and my views thereon are contained in the memorandum above, dated January 17, 1925. In view of the reference made to my above memorandum, I think it should go out to the parties interested.

OTTAWA, May 14, 1925.

GENERAL ORDER No. 416

In the matter of the General Order of the Board No. 330, dated February 16, 1921, requiring the railway companies subject to the jurisdiction of the Board to adopt and put into force the Regulations regarding the Inspection of Railway Steam Boilers, prescribed under the said Order.

File No. 29110.1

THURSDAY, the 14th day of May, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading the submissions filed on behalf of the Bureau of Labour and Fire Prevention Department of the province of Manitoba,—

The Board orders: That the said General Order No. 330, dated February 16, 1921, be, and it is hereby, amended by striking out clause 1 of the Regulations and substituting therefor the following, namely:—

“1. These rules shall apply to all steam boilers and their appurtenances operated by railway companies within the jurisdiction of the Board, except those used (a) in locomotives, (b) in heating plants which carry pressure not exceeding 15 pounds per square inch, (c) in hotels, office buildings (which do not form part of station premises), and other public places, and (e) by contractors.”

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 417

In the matter of the General Order of the Board No. 3, dated July 3, 1907, requiring railway companies subject to the jurisdiction of the Board operating a railway by steam power to equip its passenger coaches with fire extinguishers.

Case No. 1858

MONDAY, the 18th day of May, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Operating Officer,—

The Board orders: That the said General Order No. 3, dated July 3, 1907, be, and it is hereby, amended by striking out the words, “and see that copies of such records, certified by such foreman, are regularly forwarded to the Board,” at the end of paragraph 2 of the Order.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Dangerous Practices of Motorists, Drivers of Other Vehicles, and of Pedestrians, at Railway Crossings.

Files Nos. 45.8.1, 45.8.2 and 45.8.3.

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines, from November 1, 1924, to May 20, 1925, show 30 cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Toronto, Hamilton and Buffalo lines, from November 1, 1924, to May 20, 1925, show 2 cases.

The Canadian Pacific Railway lines, from November 1, 1924, to January 31, 1925, show 99 cases of danger practices by automobile drivers; 134,369 cases of pedestrians, and 8,143 cases of bicycles, passing under lowered gates.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deploras this. If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Nov. 10.....	10.40 p.m....	William St., Chat- ham, Ont.	C 34-824.....	Brakes failed; broke the crossing gate.
Dec. 1.....	3.00 p.m....	" " "	149-442.....	Auto skidded into gates breaking same.
" 2.....	2.30 p.m....	" " "	246-546.....	Did not heed watchman; ran into gates breaking same.
" 4.....	10.45 a.m....	Clark's Crossing, Bala, Ont.	22-125.....	Tried to beat street car over the crossing; missed being hit by only 6 in.; whistle was blowing.
" 12.....	2.50 p.m....	Queen St., Riverdale..	50-200.....	Ran through gates and struck side of train.
" 20.....	7.30 p.m....	Devonshire Crossing, Walkerville.	850-041.....	Car skidded into gates.
" 31.....	7.15 p.m....	Bathurst St., Toronto.	29-914.....	Did not notice freight cars on crossing; ran onto track.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Street	License No. of Auto	Dangerous Practice
1925				
Jan. 2.....	6.15 p.m...	Brock St., Drummondville.	H-950.....	Not watching ran into gates breaking iron stand.
" 2.....	1.20 p.m...	Ontario St., Montreal.	F-4779.....	Ran over crossing at high speed while bell was ringing and gates coming down.
" 7.....	3.10 p.m...	Rideau Jct. at Mile 1.5	23-407.....	Crossed in front of trains; motor stalled and was struck.
" 8.....	6.45 a.m...	Devonshire Rd., Walkerville.	.....	Did not notice gates; ran car over crossing.
" 17.....	12.45 p.m...	Eastern Ave., Toronto	43-701.....	Did not heed stop signal; ran in front of engine injuring yard man.
" 23.....	12.20 p.m...	Restaurant St., Leaside, Toronto.	69-407.....	Did not heed bell; skidded into side of train.
" 24.....	9.35 a.m...	Ontario St., Montreal.	H-10290.....	Attempted to cross while gate was being lowered and bell ringing.
Feb. 6.....	3.00 p.m...	Josephine St., Wingham, Ont.	.....	Did not heed stop signal; drove team over crossing.
" 28.....	6.45 a.m...	Devonshire Rd., Walkerville.	103-160.....	Failed to notice gates were down.
Mar. 5.....	12.52 p.m...	William St., Chatham, Ont.	17-276.....	Ran into lowered gates breaking same.
" 23.....	6.40 p.m...	Mereau St., Montreal.	T-3387.....	Ran into lowered gate breaking it; damaged motor car.
" 31.....	10.55 a.m...	Eastern Ave., Toronto	61-209.....	Reckless driving over crossing nearly knocking watchman down.
April 7.....	6.03 p.m...	Laframboise St., St. Hyacinthe, P.Q.	F. 808.....	Crossed in front of train nearly ran down watchman.
" 11.....	4.35 p.m...	" " " " " "	.....	Crossed in front of train, nearly knocking watchman down.
" 11.....	8.05 p.m...	Queen St., Riverdale.	15-110.....	Ran through lowered gates into side of train; broke the gates.
" 18.....	3.05 p.m...	Josephine St., Wingham, Ont.	.....	Did not heed stop signal; ran over crossing in front of train.
" 18.....	3.05 p.m...	" " " " " "	194-158.....	Would not heed stop signal: passed in front of train.
" 24.....1	2.37 p.m...	Dundas St., Trenton, Ont.	235-044.....	Drove over tracks against stop signal.
" 28.....	6.55 p.m...	West St., Brantford, Ont.	141-681.....	Speeding over crossing; ran through gates breaking off 10 feet.
May 5.....	12.30 p.m...	East Lake Rd., Picton, Ont.	235-159.....	Ran over crossing and struck train injuring the brakeman.
" 8.....	6.55 a.m...	Front St., Trenton, Ont.	233-267.....	Reckless driving over crossing.
" 14.....	1.30 p.m...	George St., Brantford, Ont.	147-195.....	Ran through gates breaking same.
" 18.....	10.50 a.m...	Mile 12.7 Bala Subd.	61-955.....	Attempted to beat train to crossing; was struck, damaging auto.

TORONTO, HAMILTON AND BUFFALO RAILWAY LINES

Date	Time	Street	License No. of Auto	Dangerous Practice
1924				
Nov. 19.....	3.00 p.m...	Second crossing west of St. Anns.	13534.....	Paid no attention to warning of watchman; ran over tracks and was struck.
1925				
April 13.....	9.05 a.m...	Barton St., Hamilton, Ont.	71-599.....	Was not watching and disregarded stop signal.

CANADIAN PACIFIC RAILWAY

Eastern Lines, Months of November, December, and January, 1924-1925 (Respectively)

NEW BRUNSWICK DISTRICT

Date	Time	Street	License No. of Auto	Dangerous Practice
Nov. 1 to 29	.....	Main Street, Fairville		317 persons passed under gates after they were put down.
" 19	2.15 p.m.	" "	5912	Attempted to get through gates when down.
" 27	1.00 p.m.	" "	19331	Attempted to get through gates when being lowered.
Dec. 1 to 31	.....	" "		412 persons passed under gates when lowered.
" 9	11.05 a.m.	" "		Teamster left coal team fowl of track and went to dinner—necessitating stopping of train.
" 19	1.00 p.m.	" "		Policeman lifted southeast gate and let man go through ahead of Boston and Montreal engines going to Bay Shore—Coupled.
Nov. 1 to 25	.....	Douglas Ave., St. John		23 street cars stopped under gates without signal.
Dec. 6 to 29	.....	" "		15 street cars went without signals.
Jan. 1 to 31	.....	" "		18 street cars disregarded proceed signal, and 2 cars stopped under gates.
Nov. 28	10.00 a.m.	King Street, Hartland	Pedestrian	Lifted gates while freight train was shifting—let little children across.
Jan. 1 to 31	2.00 p.m. to 11.00p.m.	Portland Street, St. John, N.B.		Children coasting causes continuous watching at times.

QUEBEC DISTRICT

Nov. 2	2.30 p.m.	Upper Main Street, Farnham, Que.		Lifted gates and drove team over crossing when shunter was close to crossing.
" 23	7.30 p.m.	" "		Parked car between gates for 15 minutes and then turned car around on crossing.
Every day	5.30 p.m. to 6.00 p.m.	Westminster Avenue, Montreal, Que.		Pedestrians frequently cross under gates.
"	"	Park Avenue, Montreal.		" " "
"	"	St. Hubert Street, Montreal.		" " "
"	"	Beaubien Street, Montreal.		Pedestrians sometimes cross under gates.
"	"	Cote de Neiges, Montreal.		" " "
During January.	All day	Bridge Street, Quebec		310 pedestrians passed under gates.
"	"	Crown Street, Quebec	146	" " "
"	"	Dorchester Street, Quebec.	78	" " "
"	"	St. Valier Street, Quebec.	716	" " "
"	"	Bonaventure Street, Trois Rivieres.	169	" " "
"	"	St. Maurice Street, Trois Rivieres.	145	" " "
Nov. 8, 1924	4.25 a.m.	Chelsea Road, Ottawa		Ran through gate, damaging same.
" 3	3.40 p.m.	"		Ran through gate while it was being Raised.
" 11	5.50 p.m.	" "		Passed street car on wrong side when over crossing at high speed.
" 14	4.45 p.m.	" "		Ran through and struck gate.
Nov. 21 to Dec. 29.	During after noons.	" "		Four autos passed over crossing at high rate of speed.

CANADIAN PACIFIC RAILWAY—Continued

ONTARIO DISTRICT

Date	Time	Street	License No. of Auto	Dangerous Practice
Nov. 3, 1924	6.55 a.m...	St. Clair Avenue, West Toronto.	22325.....	Auto went through gates before same were raised, after passing of train.
Dec. 8, 1924	10.40 p.m...	" "	Unknown.....	After gates had been put down for an oncoming train, driver of auto went over crossing at rate of about 35 miles per hour. Broke gate and did not stop.
" 15, 1924	2.30 p.m...	" "	48775.....	When gate was down and signalman hanging signal lights on same, auto did not slacken speed and would have broken gate only that man raised same with his hand and auto went under without stopping.
" 15, 1924	6.25 p.m...	" "	45792.....	Gate had been lowered for passing train and auto did not slacken speed but went right through—breaking same.
Jan. 31, 1925	11.40 a.m...	" "	49376 (1924)....	Just as gates were being dropped auto did not stop, and gateman raised same otherwise same would have been broken.
Jan. 31, 1925	11.40 a.m...	" "	C. 9293 (1924)...	Same as above.
Nov. 5, 1924	9.30 p.m...	Richmond Street, London, Ont.	Unknown.....	Auto ran through gate breaking same, which had been lowered account light engine approaching.
" 25, 1924	11.10 a.m...	" "	C. 9-367.....	Auto backed up without looking, breaking gates which were lowered for No. 21's engine going out.
Dec. 16, 1924	3.00 p.m...	Eramosa Road, Guelph.	125-254.....	Gate run through and broken by auto
" 25, 1924	10.30 p.m...	Pall Mall Street, London.	139-223.....	Gate had slight "rebound" and driver thinking signalman intended raising gate for him, drove ahead, damaging gate.
" 25, 1924	12.30 p.m...	Richmond Street, London.	281.037.....	As freight train approached, auto's brakes would not hold, allowing it to run into gates, breaking same.
Jan. 7, 1925	Between 3 p.m. and 11 p.m.	" "	.....	57 pedestrians crossing tracks while gates were down.
" 6, 1925	Between 11 p.m. and 7 a.m.	" "	.....	4 " " "
" 7, 1925	7 a.m. and 3 p.m.	" "	.....	43 " " "
" 7, 1925	"	William Street, Chatham.	.....	49 " " "
" 7, 1925	3 p.m. to 11 p.m.	" "	.....	7 " " "
" 7, 1925	3 to 11 p.m.	King Street, Chatham.	.....	27 " " "
" 7, 1925	"	Queen Street, Chatham.	.....	18 " " "
Dec. 25, 1924	10.20 p.m...	" "	.....	Auto skidded on icy pavement—striking gate, breaking it.
Jan. 26, 1925	7 a.m. to 3 p.m.	Waterloo Street, London.	.....	150 pedestrians crossing tracks while gates were down.
" 26, 1925	3 to 11 p.m.	" "	.....	18 " " "
" 26, 1925	11 p.m. to 7 a.m.	" "	.....	6 " " "
" 30, 1925	11.25 a.m...	Raleigh Street, Chatham.	144-664.....	Auto passed in front of No. 634 while watching another train switching.
Nov. 4, 1924	12.01 p.m...	King Street, Lindsay.	Ont. C. 20-780..	Approached crossing at excessive speed—skidded 30 feet in stopping when driver saw our No. 723 coming. Emergency brake was used on train to avoid accident.
Nov. 11, 1924	2.30 p.m...	Aylmer Street, Peterboro, Ont.	197-447.....	Swung auto to track unnecessarily when Yard Engine moved near crossing slowly. Damaged wheel and radius rod of auto. No collision. Locomotive stopped clear of street line.

CANADIAN PACIFIC RAILWAY LINES—Continued

ONTARIO DISTRICT—Continued

Date	Time	Street	License No. of Auto	Dangerous Practice
Nov. 15, 1924	7.05 p.m.	George Street, Peterboro, Ont.	194262.....	Ran through crossing gate which was down. Driver said he was watching engine and overlooked gate.
Dec. 1, 1924	8.00 p.m.	M. 92.5 Havelock S.D. Just East Havelock Yard (Skew Crossing).	Unknown.....	Failed to stop quite clear of crossing when freight train was approaching from East. Marks on cylinder cover indicated it had touched auto but no serious damage, as auto had gone when crew went back from Havelock Yard to investigate.
Dec. 6, 1924	9.45 p.m.	George Street, Peterboro, Ont.	295.205.....	Approached gates so fast that when brake was applied auto skidded through gates.
Jan. 30, 1925	10.35 a.m.	Foster Avenue, Belleville, Ont.	199412.....	Disregarded engine whistle and bell of Ex. 1105, crossing track at serious risk, escaping collision by very narrow margin.

During November, December and January, Pedestrians and Bicycles passed over following crossing while gates were down:—

TORONTO

	Pedestrians	Bicycles		Pedestrians	Bicycles
Bartlett Avenue—			McLennan Avenue—		
November.....	998	577	November.....	336	
December.....	831	363	December.....	354	
January.....	700	276	January.....		
	2,529	1,216		690	
Dufferin Street—			Osler Avenue—		
November.....	829	342	November.....	6,660	498
December.....	1,123	327	December.....	6,950	298
January.....	750	211	January.....	5,468	118
	2,702	880		19,078	914
Front Street—			Royce Avenue—		
November.....	1,183	43	November.....	9,790	598
December.....	1,128	32	December.....	9,870	463
January.....	1,372	11	January.....	10,443	383
	3,683	86		30,103	1,449
John Street—			Symington Avenue—		
November.....	6,186	62	November.....	5,840	1,032
December.....	4,790	76	December.....	5,361	548
January.....	5,079	33	January.....	5,208	273
	16,055	171		16,409	1,853
Lansdowne Avenue—			Eastern Avenue—		
November.....	12,825	681	November.....	598	
December.....	13,007	701	December.....	504	
January.....	12,933	192	January.....	581	
	38,765	1,574		1,683	

CANADIAN PACIFIC RAILWAY LINES—Concluded

ONTARIO DISTRICT—Concluded

Date	Time	Street	License No. of Auto	Dangerous Practice
Dec. 14, 1924	12.25 a.m...	Dufferin Street, To- ronto, Ont.	3-992.....	Auto ran into and damaged gate after it had been lowered.
Dec. 23, 1924	5.50 p.m...	John Street, Toronto, Ont.	4308.....	" " "
Jan. 18, 1924	11.05 p.m...	" "	Motor Truck...	Passed around gate on to crossing after incoming gate had been lowered.
Dec. 19, 1924	7.00 a.m...	McLennan Avenue, Toronto, Ont.	69-061.....	Auto ran into and damaged gate after it had been lowered.
Nov. 5, 1924	10.00 a.m...	Royce Avenue, Toronto, Ont.	54314, C-31796, 8319.	Three automobiles passed around gate on to crossing after incoming gate was lowered.
Nov. 6, 1924	9.10 a.m...	" "	3-296.....	Four automobiles passed around gate on to crossing after incoming gate was lowered.
	10.00 a.m...		2-368.....	
	10.22 a.m...		44-486.....	
	10.45 a.m...		C 4-319.....	
Nov. 13, 1924	1.40 p.m...	" "	67-731.....	Auto passed around gate on to crossing after incoming gate was lowered.
Nov. 15, 1924	12.00 noon...	" "	2810.....	" " "
Nov. 17, 1924	3.10 p.m...	" "	8-344.....	" " "
Nov. 21, 1924	4.00 p.m...	" "	47-898.....	" " "
Nov. 25, 1924	7.50 a.m...	" "	45-866.....	3 " " "
	10.00 a.m...		41-657.....	
	11.10 a.m...		C 4-806.....	
	11.35 a.m...		76-058.....	
Nov. 29, 1924	11.35 a.m...	" "	M-29.....	3 " " "
	2.30 p.m...		57-388.....	
Dec. 8, 1924	11.00 a.m...	" "	73-779.....	" " "
Dec. 13, 1924	2.38 p.m...	Royce Avenue, To- ronto, Ont.	61-287.....	Auto passed around gate on to crossing after incoming gate was lowered.
" 17, 1924	11.00 a.m...	" "	24-129.....	" " "
" 19, 1924	1.00 p.m...	" "	41-632.....	" " "
" 20, 1924	1.00 p.m...	" "	9957.....	" " "
" 22, 1924	4.30 p.m...	" "	Waggon.....	Team " " "
" 25, 1924	1.09 p.m...	" "	40-936.....	Auto " " "
Jan 15, 1925	10.53 a.m...	" "	46-359.....	" " "
" 21, 1925	4.00 p.m...	" "	32-312.....	" " "
" 23, 1925	3.55 p.m...	" "	70-713.....	" " "
Nov. 7, 1924	8.00 p.m...	Symington Avenue, Toronto, Ont.	5082.....	" " "
" 27, 1924	1.45 p.m...	" "	7375.....	" " "
Dec. 28, 1924	4.25 a.m...	" "	5-597.....	" " "
Nov. 6, 1924	1.00 p.m...	Cherry Street, Toron- to, Ont.	C. 5124.....	Auto disregarded stop signal displayed by crossing watchman.
" 7, 1924	12.10 p.m...	" "	9017.....	" " "
" 27, 1924	2.15 p.m...	" "	67-272.....	" " "
Jan. 7, 1925	11.00 p.m...	Eastern Avenue, To- ronto, Ont.	10-610.....	Auto ran into and damaged crossing gates after they had been lowered.
Nov. 3, 1924	.....	Peter Street, Toronto, Ont.	6-731.....	Auto disregarded stop signal displayed by crossing watchman.
" 18, 1924	.....	" "	C1-464.....	" " "
" 29, 1924	.....	" "	C8-535.....	" " "
" 30, 1924	1.48 p.m...	" "	277-185.....	Auto passed over crossing ignoring watchman's warning.
Dec. 1, 1925	1.55 p.m...	" "	9360.....	" " "
" 6, 1925	1.28 p.m...	" "	63-252.....	Auto passed over crossing at a high speed ignoring signal displayed by watchman.
" 17, 1925	9.50 a.m...	" "	53-149.....	Auto disregarded stop signal displayed by crossing watchman.
" 19, 1925	12.45 p.m...	" "	62-913.....	Auto passed over crossing at high speed ignoring watchman's warning.
" 20, 1925	7.20 p.m...	" "	27-666.....	Auto passed over crossing nearly striking crossing watchman.
Dec. 29, 1925	12.05 p.m...	" "	4,432.....	Auto drove over crossing, nearly struck by switch engine.
Jan. 1, 1925	10.35 a.m...	" "	65-031.....	Auto disregarded stop signal displayed by crossing watchman.

*Re Demurrage Penalties assessed by the Canadian Car Demurrage Bureau
under General Orders Nos. 201 and 349*

File No. 1700.

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the period of ten months, March 1, 1924, to December 31, 1924.

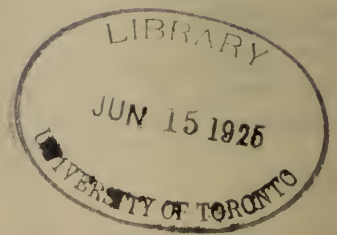
(NOTE.—First two days over free time, \$1.00 per day; three days or more, \$5.00 per day.)

EASTERN CANADA

Month	Total cars handled	Released within free time		Held over free time		Held under three days over free time		Held three days or more over free time	
		Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
1924									
March.....	201,284	186,731	92.77	14,553	7.23	11,187	5.56	3,366	1.67
April.....	172,906	161,857	93.61	11,049	6.39	8,292	4.75	2,757	1.64
May.....	185,109	174,909	94.49	10,200	5.51	7,867	4.25	2,333	1.26
June.....	181,144	170,167	93.94	10,977	6.06	8,790	4.85	2,187	1.21
July.....	181,422	169,648	93.51	11,774	6.49	9,111	5.03	2,663	1.46
August.....	170,340	160,699	94.34	9,641	5.66	7,614	4.47	2,027	1.19
September.....	178,350	168,452	94.45	9,898	5.55	7,659	4.3	2,239	1.25
October.....	216,225	202,538	93.67	13,687	6.33	11,085	5.13	2,602	1.2
November.....	183,817	171,226	93.15	12,591	6.85	9,978	5.43	2,613	1.42
December.....	163,480	152,020	92.99	11,460	7.01	9,052	5.53	2,408	1.48
Average monthly.....	183,408	171,825	93.69	11,583	6.3	9,063	4.93	2,519	1.37

WESTERN CANADA

Month	Total cars handled	Released within free time		Held over free time		Held under three days over free time		Held three days or more over free time	
		Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
1924									
March.....	78,435	73,909	94.23	4,526	5.77	3,680	4.69	846	1.08
April.....	65,047	61,892	95.15	3,155	4.85	2,622	4.03	533	0.82
May.....	80,801	77,972	96.5	2,829	3.5	2,307	2.855	522	0.645
June.....	81,490	78,230	96.00	3,260	4.00	2,512	3.082	748	0.918
July.....	68,108	64,967	95.30	3,201	4.70	2,557	3.75	644	0.95
August.....	55,411	52,945	95.55	2,466	4.45	2,025	3.65	441	0.80
September.....	85,883	82,250	95.77	3,633	4.23	2,930	3.41	703	0.82
October.....	134,560	128,168	95.25	6,392	4.75	5,523	4.1	869	0.65
November.....	148,066	141,062	95.27	7,004	4.73	5,913	4.0	1,091	0.73
December.....	102,681	96,972	94.44	5,709	5.56	4,754	4.63	955	0.93
Average monthly.....	90,048	85,836	95.34	4,217	4.65	3,482	3.82	735	0.834



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the citizens of the County of Brome, dwelling in or near the Village of Abercorn, P.Q., re restoration of C.P.R. passenger train service heretofore enjoyed by the applicants.

File 29128

Heard at Ottawa, Ontario, April 21, 1925.

JUDGMENT

COMMISSIONER BOYCE:

By their petition, filed with the Board, January 22, 1925, by Mr. Andrew McMaster, K.C., M.P., some 118 citizens of the county of Brome dwelling in or near the village of Abercorn, in that county, represented to the Board:—

(a) That during the latter part of last century the township of Sutton, in which the village of Abercorn is situated, "bound itself" in the sum of \$75,000 in order to establish the line now operated by the Canadian Pacific Railway, and that since then the people of Abercorn and vicinity have enjoyed a frequent train service by that railway;

(b) That recently, "by reason of a change in Customs arrangements," the frequency of that passenger service has been greatly reduced to the inconvenience of the people tributary to Abercorn station.

That, therefore, the petitioners ask for an order against the Canadian Pacific Railway Company for the restoration of the passenger service theretofore enjoyed at Abercorn.

The complaint is against the non-stoppage of through fast passenger trains between Montreal and Boston, which during the period that Abercorn was a Customs port of entry, stopped at that point because it was a Customs port, and picked up what local business offered at that point. By order in Council, dated January 15, 1925, the ports of Abercorn and Highwater were reduced to outposts of Customs and Excise and placed under the survey of Sutton, a point 5.5 miles north of Abercorn, and Sutton was thereby established as a Customs-Excise warehousing port, consolidating the customs business theretofore done at the Customs port of Abercorn and Highwater (6.7 miles south of Abercorn) at the new port of Sutton, and thus effecting an economy in Customs administration. Abercorn being abolished as a Customs-Excise port, the necessity for stopping through trains at that point for customs purposes ceased to exist, and the only reason for stopping the through trains would be that there was business, passenger and express, sufficient to justify, or necessitate the stoppage of such trains at Abercorn.

Abercorn and Highwater are both boundary points. The railway line from Newport, Vt., enters Canada at Highwater, where there was a Custom House. After passing Highwater the line follows the valley of the Missisquoi river and enters the United States again at Richford, Vt. It then takes a northerly direction and re-enters Canada between Richford and Abercorn, at which latter point there was also a Custom House. Both Highwater and Abercorn Customs offices were, by the Order in Council mentioned, reduced to sub-ports, and the Custom House established at Sutton performs the business formerly done by Highwater and Abercorn, Sutton being therefore constituted as the boundary Custom-Excise port for that line in Canada.

At the hearing Mr. McMaster urged the Board to order that the through trains No. 212 (southbound) now passing Abercorn at 11.18 a.m. and No. 211 (northbound) passing Abercorn at 6.07 p.m. be stopped at Abercorn. This request involved the furnishing to Abercorn of the following train service:—

Southbound

No. 212—daily—Arrive Abercorn, 11.18 a.m.

No. 214—daily except Sunday, arrive Abercorn 7.15 p.m.

Northbound

No. 211, daily, leave Abercorn 6.07 p.m., arrive Montreal 8.30 p.m.

No. 213, daily except Sunday, leave Abercorn 7.57 a.m., arrive Montreal 10.55 a.m.

The general trend of passenger traffic to be served would be from Abercorn to Montreal, as appears from the following question on the record at the hearing—

“THE ASSISTANT CHIEF COMMISSIONER: May I ask a question; I did not have the advantage of being here in the earlier part. Take the movement to Montreal. A man leaving Abercorn in the morning, would leave when?”

“MR. FLINTOFT: He would leave Abercorn, coming north, at 9.02 in the morning, arriving at Montreal just after twelve o'clock; noon.

“THE ASSISTANT CHIEF COMMISSIONER: Returning when?”

“MR. FLINTOFT: He leaves Montreal returning, at about five o'clock, and arriving in Abercorn at 8.15.

“THE ASSISTANT CHIEF COMMISSIONER: Which way is the trend of traffic, Mr. McMaster? Would Montreal be the important point?”

“MR. McMASTER: Oh yes, that is where our people go.”

It would appear, therefore, that as to this class of traffic the convenience of those desiring to spend the day in Montreal, returning to Abercorn in the evening, is served fairly well by the local trains Nos. 213 and 214, by which a person leaving Abercorn at 7.57 a.m., would arrive in Montreal 10.55 a.m., and have until 4.20 p.m. for business in the city, arriving at Abercorn 7.15 p.m. daily, except Sunday. The time of departure and arrival of the through trains, Nos. 211 and 212, would not serve the general trend of travel as stated by Mr. McMaster, nearly as well as the local train, and the small amount of local traffic has to be considered in order to justify any other service.

The local traffic, as Mr. Flintoft points out, is light. When three trains a day, each way (two through and one local) were stopping at Abercorn, the passenger travel for six months to and from Abercorn was, entrained 1,548 detrained 1,473, total 3,021, an average total of about 17 local passengers per day taken up and set down at Abercorn by six trains, or an average of less than three passengers per train per day.

This is very light traffic when handled by the local trains, which admittedly serve, at a convenient time, the general trend of the local traffic, and does not create much cogent argument for increase of facilities by the stoppage of through

trains, involving, as it would, increased expense and delay of that through traffic with practically no return for it.

Reference was made to the fact that Nos. 211 (Northbound) and 212 (Southbound) through trains, stop at Highwater, and, therefore, should stop also at Abercorn. That suggestion is, I think met by the statement filed of the passenger earnings at these two places, for the last year; the earnings at Abercorn being \$2,765.52 for the year, or \$230 per month, while those at Highwater, for same period, were \$7,036.69, or \$586 per month. With six trains per week day, or 172 per month, the revenue per train from Abercorn would be about \$1.33. Another factor is that there is a 9 per cent grade on both sides of Abercorn, increasing the difficulty and cost of stopping through trains.

With the removal of Customs House location from Abercorn, I think the controlling necessity for stopping the through trains at Abercorn ceased, and it is difficult to see, in all that has been so forcibly presented to us by the applicants, that there remains any real necessity, justified by traffic, to impose upon the railway company the expense and delay of the stoppage of the through trains.

While the local trains do not run on Sunday, and on that day, as in some instances, on week days, there doubtless will be some necessity for the use of the through trains. If there be, Richford is but 2.5 miles away, reached by a well travelled road from Abercorn, and no very great hardship would be imposed upon this very small percentage of travellers to and from Abercorn, if Richford station had to be used for entraining or detraining this small amount of traffic. The conditions and facilities are much more favourable than in a great many other parts of Canada, and as Mr. McMaster frankly admits, there is necessity for economy in costs of railway operation, and the railway should be permitted to exercise it here with comparatively slight inconvenience to the travelling public.

I need hardly make reference to what is stated in the petition, and only passingly alluded to at the hearing with regard to the alleged bonus of \$75,000 by the township of Sutton, in bygone days, to the railways, subsequently taken over by the Canadian Pacific Railway Company. We have not before us the provisions of the agreement, and it is not alleged that there was any stipulation with regard to train service. If there had been such provisions the situation would have been governed by the decision of the Board in city of Montreal vs. Grand Trunk Ry. (Cote Ste. Paul Case) 25 C.R.C. p. 448; and, city of Hamilton vs. G.T.R. (Burlington Beach Case) 21 C.R.C. p. 211. The question of any former subsidy is not, therefore, a factor in the case before us.

In the circumstances I think that the service at Abercorn at present is reasonably and fairly adequate and convenient for the traffic offering in relation to the earnings therefrom, and that following the Board's general practice as regards through trains, the railway company should not be required, now that Customs regulations no longer make it necessary, to stop its through trains at that point, which would involve increased expense and delay, without any return upon the service asked.

OTTAWA, May 18, 1925.

Chief Commissioner McKeown, Assistant Chief Commissioner McLean, and Commissioner Oliver concurred.

Application of the Township of Murray, Ont., for an Order directing the Canadian National Railways to make necessary repairs to the highway north of the station at Trenton, and to maintain the same.

File 65

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

What is involved is concerned with a diverted highway north of the Canadian National Railways at Trenton Junction, in the township of Murray, Ont. The highway in question was constructed by the Grand Trunk Railway Company, the predecessor in title of the Canadian National Railways.

The matter was dealt with by two orders of the Railway Committee of the Privy Council. One of these was dated September 5, 1901; the second was dated September 26, 1903.

In view of the time which has elapsed since the original construction, the Board has to deal with the matter in terms of the specific orders concerned. It is to be presumed that on account of the length of time that elapsed in each case before an order was finally issued the committee had before it the full record of all matters involved. Aside from the orders themselves, all that was handed over to this Board in the records of the Railway Committee in the matter in question was an incomplete file of letters. In a very considerable number of cases, there are the answers of the parties interested to letters which had gone out from the Railway Committee, copies of which original letters are not on file.

The question, then, before the Board is: what did the orders provide, and what action, if any, following therefrom is to be taken by the Board? After the lapse of some twenty years and the passing of many who were actively interested in the matter, the Board, on the record before it, cannot contemplate a reopening of the matter.

The order of September 5, 1901, recites that the Grand Trunk Railway Company had applied to the Railway Committee of the Privy Council for an order approving of certain works and changes on its line of railway at or near the town of Trenton, in the townships of Murray and Sydney; the said works to be undertaken for the purpose of reducing the grades and otherwise benefiting the said line of railway.

Included in the application was the authorization of the deviation of the Frankford and Percy roads from points a short distance north of the said line of railway to the road known as the Murray road; the construction of the highways necessary for such purpose; the erection of an overhead bridge for the purpose of carrying the railway over and across the said Murray road; and the closing of the said Percy road and Frankford road where the same cross the line of the railway.

The matter was heard by the committee before representatives of the Grand Trunk Railway Company, the town of Trenton, the township of Murray, and a representative for the Central Ontario Railway Company. The works above outlined were sanctioned, including "the deviation of the said Percy and Frankford roads by the new highways constructed to connect the same with the Murray road at points thereon north of the overhead bridge erected for the purpose of carrying the railway over the said road and of the said overhead bridge as erected."

It further ordered that the said Percy and Frankford roads "be, and they are hereby, declared closed where the same respectively cross the line of the company's railway."

The plan attached to the order shows on the north side of the track beginning at a point east of the Central Ontario tracks, a road which is marked

between this point and Trenton street on the plan as being the new road from Wooler to Trenton, and from Trenton street east the new road from Frankford to Trenton. Hitherto, there had been a continuation south of the tracks of the Percy road under various names. It is shown as continuing easterly as Percy road to where it joins Murray street east of the Central Ontario tracks, then running northeasterly it becomes Frankford street. Frankford street continues in a northeasterly direction crossing the Grand Trunk tracks. The easterly extension of the new road from Frankford to Trenton intersects the old Frankford street a short distance northeast of the point where the old Frankford street crosses the line of the Grand Trunk Railway Company. That is to say, instead of having a road dipping south crossing the Grand Trunk, the Central Ontario, the Gilmour Company's spur, and the Grand Trunk again, there is substituted at the north a road, as above indicated, with a length of approximately 3,240 feet.

The order of the Railway Committee directed a deviation of the Percy road southeasterly and easterly to the limit of the town of Trenton, and provided that the Grand Trunk and the Central Ontario were to share in terms specified in the cost of the acquisition of the land and of the construction; the municipality of the town of Trenton to be under the obligation of acquiring the necessary land, and of constructing a portion of the highway within their corporate limits. It was specifically provided in regard to the southerly deviation of the Percy road that it was to be "constructed in all respects to the satisfaction of the "Government Chief Engineer of Railways and Canals."

Then follows the paragraph:—

"And the committee further orders and directs that the said highways already constructed, as well as the new highway hereby ordered, shall, upon being constructed, be assumed and maintained by and at the expense of the municipality in which the same or the several portions thereof may be respectively situated."

It appears, then,—

(1) That so far as the road to the north of the station is concerned, the order of the committee was invoked, at least in part, for the validation of the work which had already been done.

(2) So far as the record is concerned, the deviation southeasterly of Percy road is something new and distinct from the original application.

(3) It was specifically set out that the southerly deviation of Percy road was to be constructed in all respects to the satisfaction of the Chief Engineer of Railways and Canals.

(4) In regard to the other roads, including the road to the north of the Grand Trunk station, no such provision is set out.

(5) Both the southerly deviation of the Percy road and the other roads concerned, including the road to the north, were, upon being constructed, to be assumed and maintained by and at the expense of the municipality concerned.

There was on file prior to the issuance of the order in question an extensively-signed petition dealing with the matter herein involved. The petition is not dated, but it was directed to the Railway Committee setting out various matters to which it was desired attention should be paid. It was set out that the Murray and Trenton gravelled road leading from Trenton to Wooler, Warkworth, Hastings, Campbellford, and other places, was a macadamized road and had been used as a public highway for many years before the Grand Trunk was built. Reference was made to the volume of traffic and to the fact that until recently there had been a level crossing over the Grand Trunk tracks. It was set out that a new road had been built affording a route different from what had formerly been available over the crossing in question. This road is spoken of as

"running about parallel to the railway track and quite close to same." From the maps on file, this is the new road to the north of the tracks.

Paragraph 6 of the petition is, in view of what is later developed, significant and may be quoted in full:—

"By using this new piece of road and entering the town of Trenton by this other crossing referred to, the distance is increased. A portion of the said original road has become now entirely useless for general travel, and the new piece of road that has been substituted is about two and a half times the length of the piece of the original road so made useless."

Reference has been made to the order of 1901. There is on file, dated November 4, 1901, a letter from Mr. J. B. McColl, of Cobourg, Ont., solicitor for the township of Murray. This letter is addressed to the Clerk of the Railway Committee of the Privy Council, and states that draft order and plan had been forwarded to him by the reeve of the township of Murray. It continues:—

"The order seems to be all right, except that I think a provision should be included to the effect that the work should be proceeded with immediately after the order is issued."

The order dated September 5, 1901, was formally issued under date of December 19, 1901.

Subsequent to the order of 1901, further discussion took place, concerned for the most part with matters arising between the Grand Trunk and the Central Ontario Railway Companies in regard to the participation in cost, of a portion of the work, by the Central Ontario Railway Company. There were also some matters involving the construction of the southeasterly deviation of the Percy road in so far as it affected various individuals.

Following this, on direction of the Department of Railways and Canals, there was a report made by Mr. E. V. Johnson, engineer of the department. The report is dated June 26, 1902. What was concerned here was the question of the southerly deviation of the Percy road, which is not material to the present application.

Subsequently, under date of October 23, 1902, a letter was received from Messrs. Clute & Morden of Belleville, Ont., who were now acting as solicitors for the township of Murray and who stated that,—

"Our clients are extremely anxious that the work ordered by the committee to be done should be proceeded with as soon as possible, as they and the general public have been seriously damaged and inconvenienced by the delay in carrying out the terms of the order. More than a year has elapsed since it was made and no steps whatever have been taken by any of the parties to carry out the provisions of the order."

Again, under date of May 27, 1903, Mr. Clute wrote to the Secretary of the Railway Committee stating,—

"Our clients, the township of Murray have written asking when the matter will come up and urging that it be disposed of as soon as possible."

In a letter of July 9, 1903, addressed to the Secretary of the Railway Committee, Mr. Clute, referring to this matter, said:—

"After the last meeting of the Railway Committee when this matter was arranged, all the parties, as you were no doubt advised, met on the ground and so far as the Grand Trunk Railway and the Township of Murray is concerned, signed a memorandum that was satisfactory."

The letter continued saying that the township was exceedingly anxious to get the roads in shape before the fall. There is nothing contained in the letter which more definitely earmarks the date when the parties agreed.

The order of September 26, 1903, varies from the order of 1901 in so far as details of the deviation of Percy road to the south are concerned. The status of the road to the north is not affected.

Under date of June 24, 1904, the Secretary of the Railway Committee was written to by the clerk of the township of Murray stating that the township desired to be represented when an inspection was made. They claimed there were matters outstanding in regard to drainage. The order of September 26, 1903, had directed the Grand Trunk, as far as reasonably practicable, to divert the water which would

“naturally pass through the culvert or subway intended to be used for the purpose of a highway to the culvert to the west, so as to reduce the quantity flowing through the said subway.”

This dealt with the subway through which the deviation of the Percy road to the south passed. The municipality stated that this deviation of water had not been properly arranged for; and it was also stated that the culvert under the bridge through the Grand Trunk subway and the culvert some 40 rods south of the Grand Trunk across the new road were both too small to carry all the flow of water at certain seasons of the year. They, therefore, desired to be represented when an inspection was made in this regard. They further stated that the gravel used on the new road was too coarse, full of large stones, and should be covered with a cover of finer gravel.

Following this, on request, a report was made by Mr. E. V. Johnson, said report being dated July 20, 1904. After discussing the question of drainage and making certain sundry suggestions, he stated it would require an observation of the action of the water during the freshets to form a proper judgment as to what the drainage requirements might be.

In regard to the road, the letter of the municipality speaks of “the new road.” In some cases in the correspondence on file, “new road” appears to be identified with the Percy road deviation to the south, but apparently the municipality intended “new road” to refer to the roadway to the north or to the south. At any rate, the Engineer so read it; and he stated that the roads were well constructed, with a good bed of gravel on the surface. He said there were places where boulders appeared on the surface and he expressed the opinion that the large stones lying on the road should be either broken up or covered with finer gravel.

It may be noted that the letter on file of the Chief Engineer of the Department of Railways and Canals dated July 26, 1904, in forwarding a copy of Mr. Johnson's report to this Board, shows that he regarded the new road as covering the new highways.

In 1905, an inspection during the freshet season was made by the Chief Engineer of the Board, who stated that he had looked into the question of flooding “of the subway under the tracks of the Grand Trunk Railway on what is known as the New road.” He pointed out that in the spring freshets a heavy flow of water went through the subway from time to time. There had been a suggestion as to a dyke or dam. He suggested that a concrete road should be made. The railway undertook to make the changes in regard to drainage which were recommended.

There has been some discussion as to whether or not there has been formal acceptance by the municipality of the deviation. On consideration, it seems to me that the letter of August 6, 1906, copy of which is on file from the solicitor of the township addressed to Mr. M. K. Cowan, of the Grand Trunk Railway Company, which reads as follows:—

"I am now instructed by the township to inform you 'that the new council are satisfied with concrete job at subway Trenton and have no protest against Engineer accepting new road according to award of R.R. Committee.'

"I think this satisfactorily closes the matter."—

refers to the southerly deviation of the Percy road; and it further indicates that there apparently was in the minds of those concerned some distinction which identified the southerly extension of the deviated road as the New road.

From the period terminating in 1906, the essential features of whose records, so far as the file permits, have been summarized, the Board had nothing before it, until 1924, in any way affecting the highways at this point.

Under date of April 21, 1924, the clerk of the township of Murray wrote the Board referring to the highway north of the Grand Trunk Railway station at Trenton Junction, setting out that the council claimed that the road had never been completed; that it was not the required width; that it had not been accepted by the council; that council had been given no deed of same; that no maintenance had been done by the council of Murray on this road; and that it was in very bad condition and had been so for three years.

In a letter from Mr. Maybee, M.P., for the constituency concerned, it was stated that the road in question was of no real value to the township of Murray, it being used chiefly by the vehicles and taxis to and from the station, and that it would be used much more if put in good condition; that the township had steadily refused to assume the said road or repair the same. If compelled to assume the said road, the township would have more than twice the road distance it had before the diversion. He also stated that the road was never properly constructed.

An inspection was made by the Board. Taking up in order the points concerned:—

(1) The construction of the road: The Engineer of the Department of Railways and Canals, in the inspection referred to, said the roads had been well constructed.

(2) The question of taking over by the municipality: As pointed out, it was provided that when the road was constructed, it was to be assumed and maintained by the municipality.

As pointed out further, while the southerly deviation of Percy road was to be "constructed in all respects to the satisfaction of the Government Chief Engineer of Railways and Canals," there was no such provision in the case of the road north of the Grand Trunk station.

(3) The length of the road: It is complained to-day that the diverted portion of the road being longer than the original road between the points in question places an extra burden upon the municipality. As pointed out, this was emphasized in the petition filed prior to the issuance of the order of 1901, and notwithstanding this the order placed the burden of maintenance upon the municipality.

(4) Question of maintenance: The municipality points out that no maintenance has been done since the road was constructed. This emphasizes what is already referred to in the engineer's report, namely, that the roads are well constructed.

The members of the Board walked over a portion of the road concerned and it was in a surprisingly good condition for a road on which no maintenance had been done for approximately twenty years.

Considering the whole matter, the time which has elapsed since the date of original construction without application, in regard to the condition of the road, being launched, the statement of the engineer that the road was well con-

structed, and a personal view of the situation on the ground, I am of opinion that no further action is necessary or justifiable by the Board, in regard to imposing any burden of cost for surfacing on the railway.

I have in mind as well in saying this that the inspecting engineer did say that there were certain boulders which should be broken or covered with gravel. If no maintenance has been done, time seems to have settled this phase of the matter because the boulders in question were not apparent when we walked over the road.

Aside from the question of construction of the road, there are one or two matters of drainage concerned which were taken up with the engineer who was present. East of the station, there is a low swampy section, water from which seems to spread over on to the diverted road. This had already been the subject of inspection by the Board's Engineer, who stated that the ditch north of the railway, just east of the station, was not in condition to carry water away in the spring, and should be cleaned out and put in proper condition. This was inspected when the Board was on the ground, and apparently this had been taken care of.

At the first subway west of the station, it is necessary to have the ditch cleaned out. The ditch blocks up and apparently water runs out on the diverted road. Mr. Frith, the railway engineer, stated that he would look after this.

In regard to the southerly deviation of the Percy road which has been referred to, there is, as has been pointed out, a subway with a concrete floor. The ditch is under this. It was claimed by the municipality that this blocked up from time to time and that the road was at times impassable. This appears to be in part due to the ordinary water of the lands, that is, drainage, and also, in part, to water being released from mill-dams to the north. There is a culvert still further west which takes care of a good part of the water.

In regard to the culvert and the water flowing under the concrete flooring referred to, it seemed from the inspection made that there were some cross-timbers under the concrete flooring which interfered with the flow. The engineer stated that he would look into this.

May 20, 1925.

Commissioner Boyce concurred.

Application of the Municipal Council of the Parish of St. Stanislaus de la Riviere des Envies, on behalf of the ratepayers of the Municipality of St. Stanislaus, P.Q., for an Order directing the Canadian National Railways to extend the local train service now running between St. Prosper and Quebec City, to run to and from Shawinigan Falls.

File 27563.4.

JUDGMENT

McLEAN, Assistant Chief Commissioner:

At present there is one train daily, except Sunday, each way between Shawinigan Falls and Quebec. Train No. 10 leaves Shawinigan Falls 12.40 p.m., arriving Quebec 4.30 p.m. Train No. 9, in the opposite direction, leaves Quebec at 11.10 a.m., arriving Shawinigan Falls at 3 p.m. The existing service by the Canadian National Railways is as follows:—

	No. 9 Except Sunday	No. 19 Except Sunday	No. 125 Sunday only
Lv. Quebec.. . . .	11.10 A.M.	4.20 P.M.	9.00 A.M.
Ar. St. Prosper.. . . .	1.27 P.M.	6.40 P.M.	12.40 P.M.
Ar. Shawinigan Falls.. . . .	3.00 P.M.		
Ar. Montreal.. . . .	6.10 P.M.		

	No. 10	No. 20	No. 126
Lv. Montreal.. . . .	9.30 A.M.		
Lv. Shawinigan Falls .. .	12.40 P.M.		
Lv. St. Prosper.. . . .	2.13 P.M.	(a) 5.25 A.M.	5.20 P.M.
Ar. Quebec.. . . .	4.30 P.M.	7.50 A.M.	9.00 P.M.

Nos. 125 and 126 operate Sunday only June 14 to September 6.

(a) Summer schedule, during balance of year operate one hour later.

The through service daily, except Sunday, which is referred to is incidental to through service between Montreal and Quebec.

Prior to 1921 there was a local passenger service between Quebec and Shawinigan Falls leaving Quebec in the morning and returning the same night. The change whereby the local service was limited between Quebec and St. Prosper was made in 1921.

It was represented that the people of the localities concerned are specially interested in having Quebec available as a business centre. It was stated that the train service afforded at present is unsatisfactory because of the limited time it allows for stop-over in Quebec. Mr. Mongrain, representing the municipality of St. Stanislaus, especially emphasized the importance of Quebec as a business centre. He stated that at St. Prosper, the end of the present local service, there was no local traffic it being simply a turning point.

It is admitted by counsel for the applicants, and also by Mr. Mongrain who spoke on behalf of the municipality of St. Stanislaus, that Shawinigan Falls, which was mentioned in the application, was not particularly interested. This point is served by the Canadian Pacific. At the same time it was suggested that some traffic now moving by the Canadian Pacific could be attracted to the Canadian National if the service were available. The opinion was also expressed that some traffic might be obtained from Grand Mere. Both Shawinigan Falls and Grand Mere are served by the Canadian Pacific as follows:—

	Except Sunday	Daily	Except Sunday	Sunday
Lv. Grand Mere.. . . .	6.00 A.M.	10.00 A.M.	5.40 P.M.	4.40 P.M.
Lv. Shawinigan Falls .. .	6.15 A.M.	10.15 A.M.	5.45 P.M.	4.55 P.M.
Ar. Quebec.. . . .	9.50 A.M.	2.00 P.M.	9.45 P.M.	8.45 P.M.

	Sunday	Except Sunday	Except Sunday	Except Sunday	Daily
Lv. Quebec.. . . .	8.00 A.M.	9.00 A.M.	1.30 P.M.	4.00 P.M.	5.00 P.M.
Ar. Shawinigan Falls.	1.00 P.M.	1.00 P.M.	4.40 P.M.	7.35 P.M.	8.35 P.M.
Ar. Grand Mere.. . .	1.15 P.M.	1.15 P.M.	4.55 P.M.	7.50 P.M.	8.50 P.M.

Garneau, one of the points mentioned which would be served by the extended service asked for between St. Prosper and Shawinigan Falls, has train service by the Canadian Pacific Railway, and in addition a tri-weekly service by the Canadian National, the latter being in addition to the daily one-way service already referred to. The following detail may be noted in this connection:—

	Ex. Sunday	Ex. Sunday
Lv. Garneau.. . . .	7.30 A.M.	2.15 P.M.
Ar. Quebec.. . . .	2.00 P.M.	9.45 P.M.
	Ex. Sunday	
Lv. Quebec.. . . .	1.30 P.M.	
Ar. Garneau.. . . .	5.20 P.M.	

In addition to the Canadian National Railway and Canadian Pacific Railway services, Garneau-Quebec already shown, the Canadian National Railway provides a tri-weekly service Garneau-Quebec as follows:—

Lv. Garneau.. . . .	6.55 A.M.	Tues., Thurs., Sat.
Ar. Quebec.. . . .	11.30 A.M.	"

The railways contention is that the existing service afforded by trains 19 and 20 is unprofitable. On trains 19 and 20 between Quebec and St. Prosper the annual loss is shown at \$22,000, or 55 cents of loss per train mile. The stations which it was claimed by applicants will afford additional traffic on the run between St. Prosper and Shawinigan Falls are St. Stanislaus, Proulxville and Garneau. The company gives a statement of three months traffic between Quebec and these three points for the months of April, July and September, 1924. The total traffic for the three months in question is \$700.45, or extending it on this basis for one year, \$2,800.

It is to be noted that it is claimed on behalf of the applicants that these months do not afford a characteristic measure of the revenue. It is further stated that on account of the way the trains are at present timed people, who otherwise would travel by rail, travel by motor buses in order to cut down the time they have to spend in Quebec. However, these are the only figures available on this phase of the matter.

The total number of passengers carried in these three months was 330. Extending this number over a period of twelve months it would give 1,320 passengers with average earnings of \$2.12 per passenger. On the basis of the one-way first-class fare of 3.45 cents per mile, this would mean an average trip per passenger of 60 miles. Assuming the trip is on the round trip basis, this would give a per mileage charge of 3.105 cents, which would be the equivalent of an average journey of 68 miles. The average of 68 miles is approximately the time-table distance of St. Stanislaus from Quebec.

The distance from St. Prosper to Shawinigan Falls is 29 miles by the working time-table. The additional mileage which this service would thus entail for the 313 working days would be 18,154 train miles. The train mile cost on the line in question is figured at \$1.50; that is to say, the 18,154 miles represents additional operating costs of \$27,231, or, on the basis of daily operation, \$86.99 for the two-way movement.

In this connection there naturally arises the question of what traffic is available to offset the additional operating cost so set out. The most favourable estimate that can be made from a revenue standpoint is that as a result of the extended local service every passenger will make the round trip from Shawinigan Falls to Quebec. On the round trip basis this would mean earnings per passenger of \$3.17. At this figure it would take 8,587 passengers in the daily except Sunday service to meet the additional operating costs, or, 27 passengers per day additional. In the figures which have already been given in regard to the traffic from St. Stanislaus, Proulxville and Garneau, there is an average of 110 passengers per month, or, on the 26-day working basis, 4.2 passengers per day.

The trains 19 and 20 lost 55 cents per train mile in 1924. On the record before the Board there is no reason to expect a better operating ratio on the extended service from St. Prosper to Shawinigan Falls than applies between St. Prosper and Quebec. The application then of the same operating ratio to the extended service would mean a loss of \$9,984. In the computations so made nothing is charged up against the service for any proportion of taxes, superintendence, maintenance of track and buildings.

As already indicated there is a service by the Canadian Pacific from Grand'Mere and Shawinigan Falls to Quebec, and on the admissions made by the applicants and their solicitor not much traffic can be expected from this source.

It has been pointed out that in order to make the through connection with Quebec from Shawinigan Falls, which is asked for, it will be necessary to have the train leave at 4.05 a.m., summer time. This is due to the fact that the train has to be timed to take care of commuters' traffic which covers a distance of about 36 miles out from Quebec. The Canadian Pacific train, as pointed out, leaves Shawinigan Falls at 6.15 a.m.; and the argument of the railway that the

train leaving at the later morning hour would get the bulk of the traffic seems to be a tenable one.

So far then as the traffic from points short of Shawinigan Falls and Grand-Mere is concerned, all that is before us is the statement covering traffic moving from Garneau, St. Stanislaus and Proulxville to Quebec during specified months. The criticisms made of these figures must be borne in mind, but at the same time a computed total of \$2,800 based on three months earnings is all by way of definite evidence we have before us on this phase of the matter.

The statements made on behalf of the applicants were, of necessity, very general. The figures of operating costs which have been given above must be borne in mind, and making as much allowance as seems justifiable in regard to the possible traffic movement, there does not appear to be sufficient traffic from points local to the Canadian National line involved to enable breaking even on the cost of operation.

While the Board is desirous of meeting the convenience of the travelling public as much as possible, it must be borne in mind that it is not justifiable for it to direct the installation of a service which, on the record before it, will fall short of meeting the out-of-pocket costs.

The application, therefore, must be dismissed.

OTTAWA, May 23, 1925.

Chief Commissioner McKeown and Commissioner Boyce concurred.

Application of the Canadian National Railways for reconsideration of Order No. 36211, dated March 25, 1925, in the matter of the application of the Department of Roads in the Government of the province of Quebec, for authority to construct an under-crossing of the Canadian National Railway in the parish of Notre Dame des Neiges des Trois-Pistoles, in the county of Temiscouata, P.Q., so as to eliminate a level crossing, as shown on the plan and profile, on file with the Board.

File 26782.54

Heard at Montreal, P.Q., May 11, 1925.

JUDGMENT

COMMISSIONER BOYCE:

The Minister of Roads for the province of Quebec applied to the Board for leave to carry the Levis-Rimouski highway under a spur on the Tobin Branch of the Canadian National Railways in the parish of Notre Dame des Neiges des Trois-Pistoles, in the county of Temiscouata, which spur is occupied by the Brown Corporation as a private spur operated under an agreement with the Canadian National Railways. The application would appear to be within the contemplation of section 257 of the Railway Act and a diversion of the highway is involved.

In its answer, the Brown Corporation does not object to the highway being carried under its spur at this point, but insists (a) that the Board has not the power to order, and if it had the power should not order, that any portion of the cost of the work contemplated by the application, should be borne by that Corporation; (b) that the alterations of grade proposed by the applicant are not necessitated by the requirements of public safety in eliminating a dangerous level crossing, but solely as part of a general provincial highway scheme to overcome local topographical obstacles and eliminate undesirable grades on the highway; (c) that the present crossing is in no way a menace to the safety of the public, no accident has ever occurred at it, and the highway traffic is light; and

(d) that the application does not concern the Brown Corporation, but is purely a highway scheme, and it strenuously objects to being made a contributing party thereto.

The Canadian National Railways also do not object very strenuously to the work on the highway being done, but does object vehemently to any part of the cost of, or incident to it, being charged against it, and insists that this Board has no jurisdiction to make any order against the railway company for any such contribution because, as it contends, the spur, under which it is proposed to carry the highway by a subway, is the property of the Canadian Government Railways, and under the provisions of section 14 of chapter 13, Statutes of Canada, 1919 (Canadian National Railway Act), and the work proposed not being concerned with the "operation" of the railway, but being in its nature, attributable to "construction and maintenance" thereof, it is within the exception stated in the section just referred to, and, therefore, this Board is without power to make any order against the railway company with respect to it.

With these objections before it, and as the applicant was anxious to proceed with the work, Order No. 36211, dated March 25, 1925, was made authorizing the road diversion and under-crossing, with a contribution of twenty-five per cent of the cost to be paid out of the "Railway Grade Crossing Fund," the question of the apportionment of the remainder of the cost to be reserved for further consideration by the Board. The matter was then set down to be spoken to by the interested parties, and their respective contentions were pressed upon the Board at the hearing.

Before the hearing the Board had the *locus in quo* examined by its Assistant Chief Engineer, whose report to the Board, concurred in by the Board's Chief Engineer, is confirmatory of the contention of the Brown Company herein referred to as to the lack of necessity, from a point of view of protection of highway travel, for the under-crossing, and also as to the work being solely a highway project to eliminate or reduce existing grades. The report of the Assistant Chief Engineer contains the following pertinent paragraph:—

"On going into the matter carefully I found that the present highway crossing over the Tobin Branch of the Levis-Rimouski highway, as shown in yellow on blueprint attached, is just before reaching the crossing of the tracks on the west approach, is on about a 15 per cent grade, and after crossing the tracks on the east approach is on a very steep hill, on at least a 20 per cent grade, which makes it almost impossible for motor or vehicular traffic to negotiate, especially in wet weather, as the nature of the soil is clay, automobiles getting stuck on the grade and having to be pulled out by teams. *For this reason alone it is found necessary in order to construct a proper highway to construct an under-crossing at a point 130 feet to the south of the grade crossing shown in red. This will give the Department of Roads a 10 per cent grade on highway construction. As it is at present there are about four-train movements in twenty-four hours over the crossing. The train movements are always slow, and are protected by a brakeman going forward and flagging the train or cars over, therefore there is hardly any danger to the public using the crossing so far as train movements are concerned.*"

Mr. Fraser, K.C., counsel for the Canadian National Railways, pressed upon us at the hearing his contentions that under section 14 of the Canadian National Railways Act, 1919, the Board was without jurisdiction to make any order against the railway company because, as already stated, such an order would, as counsel contended, necessarily involve contribution to "construction and maintenance" and not to "operation" of the railway, and that the work in question was within the exceptions of the section. This argument involves more

serious consideration then, in the conclusion at which I arrive in disposing of this case, I find it necessary to give to it at this time.

The Brown Company argued that it should not be made a contributing party for the reasons stated in its answer, which I have quoted.

Counsel for the Minister of Roads contended that there should be contribution by the railway and the Brown Company as the elimination of the crossing was a work within the jurisdiction of the Board involving considerations of public safety as regards persons travelling on both the railway and the highway.

There were no facts presented to us at the hearing which, in my opinion, varied the findings of the Assistant Chief Engineer which I have quoted, and which findings I would confirm and adopt.

The crossing not being inherently dangerous, and there being, at present, very little travel over it, and the railway line being but an industrial spur of a temporary character and infrequently used, as the Brown Corporation avers, and it being made clear that the sole object of the application is to obtain a better grade for the provincial highway, I do not think that the work is of a character that justifies the Board in imposing upon either railway company or the Brown Corporation any financial burden whatever as to construction or maintenance of diversion or under-crossing.

A level crossing being eliminated with a contribution (25 per cent) to the cost of a work involving such elimination, out of the Railway Grade Crossing Fund, the balance of the cost of the works might well be borne by the applicant as part of the cost of its highway construction, and I would so dispose of the matter and make no further order for contribution. Order should go dismissing the application for contribution by the railway company and the Brown Corporation, and Order No. 36211 will stand as the disposition of the cost of the work.

OTTAWA, May 27, 1925.

Chief Commissioner McKeown, and Assistant Chief Commissioner McLean concurred.

Application for an Order amending Order No. 34255, dated October 2nd, 1923, so as to provide for approval of revised plans showing C.P.R. viaduct over Galt Street, City of Sherbrooke, Que. File 31922.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Order No. 34255, of October 2, 1923, ordered the reconstruction of the viaduct on Galt street, in the city of Sherbrooke, province of Quebec.

Under the agreement which had been arrived at between the Canadian Pacific Railway Company and the city of Sherbrooke, the railway was to pay 30 per cent of the cost of the widening of the viaduct on Galt street, without contributing to the land damages, if any, involved. There was brought before the Board the question of the proportion of cost, if any, which was to be borne by the Sherbrooke Railway and Power Company, Limited.

On consideration and for the reasons set out in the judgment of September 22, 1923, it was provided that the Sherbrooke Railway and Power Company should contribute 10 per cent of the cost of the work at the point in question, including in said cost the expense, if any, necessary in respect of land damages; it being further provided that the cost of the re-location of the tracks of the Sherbrooke Railway and Power Company, Limited, as distinct from its contri-

bution to the general cost of the work was to be borne and paid by the said company; and the said work of the re-location of the tracks was to be done by the Sherbrooke Railway and Power Company, Limited.

Subsequently, under date of September 15, 1924, the Board received a letter from the Canadian Pacific Railway setting out that after a considerable proportion of the work on the abutments of the Galt street viaduct had been done, the city of Sherbrooke pressed for a further enlargement of the structure so as to give a much increased street opening. The Canadian Pacific Railway Company consented to the rearrangement thus asked for, on the condition that the cost was to be divided between the city and the railway in the same proportion as under the agreement already referred to in connection with the decision rendered in 1923.

The city reserves to itself the right to recover 10 per cent of the cost from the Sherbrooke Railway and Power Company, Limited, and to require that company to re-locate its tracks through the subway as shown on the plan filed, and to bear all the expense of such work. That is to say, the contribution so outlined, which the city reserved the right to obtain from the Railway and Power Company was in ease of the general obligation of the city under agreement as between itself and the Canadian Pacific Railway Company.

The city of Sherbrooke was written to pointing out that while the agreement between the city and the Canadian Pacific Railway Company in regard to the supplementary work herein involved had been set out both in a communication from the Canadian Pacific Railway Company and in one from the city, there was nothing to show what position was taken by the Sherbrooke Railway and Power Company, there being no evidence of service of the application upon said Railway and Power Company.

The city was pressed for answer, but it was not until January 19, 1925, that a copy of the application was served upon the Railway and Power Company by the city.

Further delays took place in connection with obtaining the answer of the Railway and Power Company. The plans being satisfactory, were approved by the Board's Order No. 36238 of April 6, 1925; the question of the apportionment of the cost of the work being reserved for further consideration by the Board. As pointed out, what was involved was the right, if any, of the city of Sherbrooke to claim over against the Railway and Power Company.

The matter was spoken to at Montreal and an investigation has been made on the ground. The city representatives claimed that the reconstruction provided for under Order No. 36238, of April 6, 1925, is for the benefit of all concerned. This representation is challenged by the representative of the Railway and Power Company.

The first enlargement of the subway at Galt street was approved by Order No. 34255 and shows a subway 52 feet in width in line with Galt street. The enlargement in this case was all to the north side of the old abutment, which was to be altered into a pier and was to remain in place. The last plan approved by Order No. 36238, No. B—111736-1, shows a subway with a clear width of 64 feet in line with Galt street. It reduces the turn at the intersection of Larocque street and also improves the turn at the intersection of Alexander street. This proposition calls for the removal of the stone masonry pier that was left in the centre of the subway by the first plan and requires the realignment of the street railway track into a single curve with a radius of 52 feet, an improvement in the radius of three feet and also in the alignment of the track. It provides for increased roadway in the north section of the subway where the street railway track is located and provides a distance of 25 feet between the sidewalk and the nearest rail of the track instead of 13 feet as called for by the first plan. It provides, also, for a subway the full width of

Galt street and increases the roadway under the south portion of the subway by about 12 inches.

As will be observed, the improvement carried out under the last approved plan is an improvement to the benefit of the street and, in my opinion, is of no benefit to the Sherbrooke Railway and Power Company.

I am advised by our Engineer that the Sherbrooke Railway and Power Company agrees to bear the cost of the relocation of its tracks necessitated by the plans approved under Order No. 36238.

No order as to contribution should be made against the Sherbrooke Railway and Power Company, Limited, in respect of the additional work provided for under Board's Order No. 36238, of April 6, 1925, over and above what is provided for under the Board's Order No. 34255 of October 2, 1923.

If any question arises hereunder in respect to the basis on which the apportionment is to be made, this is to be settled by the Board after report by its Engineer.

May 27, 1925.

Chief Commissioner McKeown and Commissioner Boyce concurred.

Application of Hunter Brothers, Limited, Rossland, B.C., for rail service to their warehouse, and that the Great Northern Railway Company either replace the spur track or move warehouse to a point on the Canadian Pacific Railway Company's track. File No. 30607.

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner:*

By the decision of this Board in the case of Rossland Board of Trade v. Great Northern Ry. Co., reported in Vol. 28, C.R.C., p. 24, the opinion was expressed that the Railway Act does not authorize this Board to prevent a railway company discontinuing the operation of its railway, and from removing its rails, nor has the Board the power to compel it after discontinuance to resume operation.

The Great Northern Railway Company discontinued its service upon the Red Mountain Railway at Rossland and removed all its track at that place, except a portion of the line lying between the Great Northern Railway depot at Rossland west to the Le Roi No. 2 Mining Company's tippie.

Prior to the removal of the rails above noted, the present applicant had a warehouse upon a portion of the line so removed by the railway company, and such removal left it without railway access to its warehouse. The company's right to remove its rails being recognized by the judgment above mentioned, it is not at present open to applicant to complain that the withdrawal of its railway facilities was wrongful. Nevertheless, it is clear that the applicant company has been deprived of facilities which it previously enjoyed, and the present application is to require the railway company, either to restore such facilities as previously existed, or to furnish satisfactory accommodation to the applicant elsewhere.

The Great Northern Railway Company entered Rossland in the year 1897, and applicant built a warehouse upon a spur line which served not only the applicant, but a few other business establishments as well. The Canadian Pacific Railway Company also operates in that locality, but its nearest point is at a distance of some 1,600 feet from the warehouse belonging to applicant, and the re-establishment of railway facilities to applicant's warehouse would mean relaying the track at a cost of about \$3,000, as estimated by the Board's Division Engineer. Another alternative suggested is for the Great Northern Railway Company to remove applicant's warehouse to a point on the Canadian

Pacific Railway Company's line, or to make a cash allowance to applicant to cover or partly cover such relocation.

Although the removal of the facilities was legally effected under the judgment of the Board, nevertheless I incline to the opinion that, even in the face of legal removal, conditions may under certain circumstances exist which would entitle the holder of such facilities to accommodation elsewhere or otherwise, *Canadian Northern Ry. Co. v. Robinson*, 6 C.R.C. 101. But apart from all other questions, there is in this case the outstanding fact that applicant's warehouse was built upon land to which its only title was a lease subject to cancellation on ten day's notice, and under which a rental of \$1 a year was paid by applicant. Formal notice of the termination of such tenancy was given by the owners to the applicant on January 16, 1925, and it was thereby required at the expiry of ten days from the service of the notice to quit and surrender and deliver up to the owners of the land possession of the premises upon which such building was placed.

Assuming that the warehouse in question is entitled to the facilities which the Act says must be extended to "industries," the right to the restoration of such facilities to a building of this nature must be greatly affected by the tenure under which such building is held or owned, and an application to afford or to restore railway facilities to a building erected on land of which the person so applying has no ownership, or a tenure so brief that it can be terminated on demand, could not, I think, be regarded as well-founded. Whether or not applicant has been permitted to remove the building from the land does not appear, but the legal situation is plain, and the conclusion is inevitable that applicant is before the Board asking for restoration of railway facilities to a place over which it appears to have no property right whatever.

The judgment of the Board which recognized the right of the railway company to remove its track was issued on June 24, 1922. The *Le Roi No. 2 Mining Company*, which was operating a mine in that vicinity, complained of the loss of its facilities, and its complaint resulted in a hearing before the Board at Nelson on September 25, 1922, at which the late Chief Commissioner, Hon. F. B. Carvell, presided. Record of the hearing shows that Mr. R. H. Clegg appeared for the city of Rossland and for Hunter Brothers, Limited, in support of the complaint, and Mr. C. R. Hamilton, K.C., for the *Le Roi No. 2 Mining Company*. The entire testimony is concerned with a discussion of facilities to the mine, and no attention was given to the claim now put forward on behalf of Hunter Brothers, although, as before remarked, Mr. Clegg appeared for the present applicant, as well as for the city of Rossland. No order was made by the Board, but by arrangement made by the Canadian Pacific Railway Company and Great Northern Railway Company the output of the mine was taken care of by the Canadian Pacific Railway Company. Nothing has been done for the present applicant, and the matter herein involved remains unsettled.

It was discussed at a hearing held by the Board at Nelson in the month of November last, and the difficulties of the situation were pointed out to Mr. Ternan, who appeared for the applicant.

If I could discover any jurisdiction on the part of the Board to grant relief in this case, I would not hesitate to avail myself of that power. Although the applicant has been invited more than once to indicate to the Board under what sections of the Act it is claimed that authority is vested in it to afford relief, no information on that point has been forthcoming, and inasmuch as applicant has requested us to bring the matter to a close, no other course remains than to dismiss the present applicant.

OTTAWA, May 29, 1925.

McLEAN, Assistant Chief Commissioner:

I agree that the Board is without jurisdiction to grant relief in this case. Commissioners Boyce and Oliver concurred.

Application of the Canadian Pacific Railway Company, for permission to remove the Slow Order placed at first crossing east of Haney Station, B.C., Mileage 102.7, Cascade Subdivision, where J. M. Burnett was injured, February 25, 1925.

File 9437.1058

JUDGMENT

COMMISSIONER BOYCE:

The application is to remove the speed restriction automatically applying by operation of section 309 (c) as a result of an accident that occurred February 25 last, by which one J. M. Burnett was slightly injured.

The Inspector finds that the accident was not due to the mismanagement of the train concerned in the accident. The injured man was driving north in a hooded Ford auto truck and, as the Inspector reports, apparently did not see or hear the approach of the train until too late to stop. The Inspector is of opinion that after going over the eastbound main line the attention of the injured man was taken up largely in changing the gear of the car. The man informed the Inspector that he knew nothing of the approach of the train until the front wheels of his car were almost on the westbound track, when he endeavoured to back up and had put his engine in reverse gear but was not able to clear the on-coming engine. The Inspector further reports that had the injured man been looking for approaching trains he would have prevented the accident.

Despite some controversy as to the ringing of the engine bell and the sounding of the whistle, the Inspector, after hearing conflicting statements, is of opinion that the necessary warnings from the engine of the approach of the train were given.

The crossing is protected by an electric bell, installed under Order of the Board No. 21241, dated January 21, 1914, at a cost of \$847.45, and the Inspector reports that it was "established that this bell was in good working order at the time of the accident."

Therefore, I think it clear that the accident was due to the inattention of the injured man to warning signals.

The view at the crossing, and the fact that cars are left standing on the railway so close to the highway as to obstruct the view of approaching trains, are referred to in the Inspector's report, part 2, p. 1.

The Inspector recommends that cars be prohibited from being allowed to stand within 50 feet of the street line in either direction at this crossing; that a wig-wag signal be added to the bell not later than August 1 next, and crossing sign clearances for guidance of employees as to placing of cars be installed, and in the meantime that the speed restriction be released, and the Chief Operating Officer concurs in the recommendations of the Inspector as to increased protection.

The traffic returns for forty-eight hours at this crossing furnished by the railway company shows:—

Vehicles..	267, or 5.56 per hour.
Pedestrians..	407, or 8.47 per hour.
Trains..	55, or 1.14 per hour.

During fourteen hours of the forty-eight hours for which the return is made there were no trains, and during those fourteen hours the highway traffic, included in the above figures, was as follows:—

Vehicles..	145, or 10.35 per hour.
Pedestrians..	180, or 12.85 per hour,

showing that the greater percentage of highway travel is related to the hours at which there were no trains.

The balance of the traffic, for the thirty-four hours when there were one or more trains per hour, is as follows:—

Vehicles..	122, or 3.58 per hour,
Pedestrians..	227, or 6.67 per hour,
Trains..	55, or 1.61 per hour,

again demonstrating the paucity of highway travel, vehicular and pedestrian, in those hours when there were trains.

This traffic, when analyzed, is very light; much lighter, indeed, than in the majority of cases where the Board has refused an order for protection.

No previous accident is reported to have taken place at this crossing and no representations as to conditions at the crossing are made by the municipality or public, although the application for the bell in 1914 was made by the Board of Trade of Port Hammond.

The view at the crossing and its approaches leave, as in many other instances, especially in a mountainous country, much to be desired, but all those features were taken into consideration by an engineer of the Board in 1914 when, after a careful examination of the situation on the ground, he reported, January 6, 1914, in favour of the installation of the present bell as adequate protection therefor, and this report was concurred in by the then Chief Engineer. The adequacy of this protection has been demonstrated since 1914 by immunity from accident, and, upon what is before us, in relation to the recent accident (the only one reported as having taken place), I am satisfied that if due care had been taken by the injured man to "stop, look listen," or even to "look and listen," there would have been no accident to consider now. I do not think a wig-wag could have prevented the accident in question, as the injured man's faculties were apparently all concentrated upon his car when they should have been directed to observance of danger signals. He apparently did not use his eyes to look for the train, or his ears to listen for it. It is impossible to protect any crossing if the users of the highway do not exercise their faculties to protect them in a place of danger.

I think, therefore, that the protection by bell, installed under order of the Board in 1914, has not proved ineffective or inadequate by anything disclosed in the accident. On the contrary, I think the crossing is at least as adequately protected now as it was in 1914, when the bell was installed. The conditions at the crossing are apparently the same as they were in 1914 when the present protection was ordered by the Board. The highway traffic, small as it now is, could hardly have been less at that time and probably, because lumbering was then more active, was much heavier. The adequacy of the protection to meet those conditions has been proved during more than ten years, and I feel strongly that it would be a great hardship upon the railway company, and would create a precedent at variance with principles laid down by the Board in other cases, if the company were to be saddled with the cost attendant upon the installation and annual maintenance of additional protection, because of the lack of reasonable care of one vehicle driver to heed danger signals and to exercise due alertness in a place of danger.

I would direct the railway company that all cars on the commercial track be kept 50 feet at least from either side of the crossing and that proper warning signs to employees be erected to this effect. With this provision I would declare the crossing sufficiently protected. The order to be framed so as to provide that so long as the cars are kept back from the crossing the crossing is protected to the satisfaction of the Board so that if this condition is not complied with the Board may impose a slow order.

OTTAWA, June 4, 1925.

The Chief Commissioner and Assistant Chief Commissioner McLean concurred.

ORDER NO. 36400

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic the track between Fresnière Junction and Rinfret Junction, known as the St. Jerome Connection:

File No. 19704.26.2

FRIDAY, the 22nd day of May, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board Orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the track between Fresnière Junction and Rinfret Junction, in the province of Quebec, known as the St. Jerome Connection, a distance of twelve miles: Provided the speed of trains operated over the said line shall not exceed a rate of twenty miles an hour.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 36405

In the matter of the application of the Nichols Chemical Company, Limited; of Montreal, hereinafter called the "Applicant Company," for an Order suspending Item No. 1260-C in Supplement No. 7 to the Canadian Pacific Railway Company's tariff C.R.C. No. E-4153:

File No. 26919.4.

FRIDAY, the 22nd day of May, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, May 11, 1925, the applicant company and the railway company being represented at the hearing, and what was alleged,—

The Board Orders: That the Canadian Pacific Railway Company be, and it is hereby, required to publish and file a rate of \$1.90 per gross ton on iron pyrites ore, in carloads, from Sherbrooke, Quebec, to Sulphide, Ontario; the said rate to remain in effect until the 15th day of September, 1925.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 36420

In the matter of the application of the Nipissing Central Railway Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff C.R.C. No. 34, on file with the Board under file No. 29168:

MONDAY, the 1st day of June, A.D. 1925.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer—

The Board Orders—that the applicant company's Standard Passenger Tariff C.R.C. No. 34, on file with the Board under file No. 29168, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of *The Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

[The following text is extremely faint and illegible due to the quality of the scan. It appears to be a list or a series of entries, possibly related to a historical record or a scientific study. The text is organized into several paragraphs, with some lines appearing to be headings or sub-sections. The content is too blurry to transcribe accurately.]

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Ottawa Electric Railway Company for permission to revise fares on its lines outside the City of Ottawa, in accordance with tariffs filed on February 24, 1925.

Case 2987.

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The decision of the Board of April 19, 1920, provided, in so far as the particular fares are material to the present situation, for a fare between Holland avenue and Britannia Park of 5 cents cash, and during the hours of 6 to 7.30 a.m. and 5 to 6.30 p.m., 8 tickets for a quarter. The latter were so-called "Workingmen's tickets." These tickets hereinafter are called "yellow tickets." It is alleged that within the hours limited these tickets are of general use and not limited in use to workingmen. This is natural.

Application is made for revision of the fares within the territory covered by the judgment of 1920 in respect of (a) the territory; (b) the yellow tickets.

It is proposed to have one zone extending from Granville avenue, the westerly limit of the city, to McKellar Townsite, hereinafter called Zone A; and a second from McKellar Townsite to Britannia, hereinafter called Zone B. It is proposed to take out the yellow tickets in the zone from the city limits to McKellar, and to provide within that zone for a rate of ten tickets for a quarter, not limited as to any particular period of the day during which cars are operated. This will leave the 5-cent cash fare for the individual trip untouched, and substitute not only for the period now covered by the yellow tickets but also for the rest of the working day a fare of $2\frac{1}{2}$ cents. It is proposed that in the zone from McKellar to Britannia, Zone B, the yellow tickets shall be removed, no reduced fare being substituted therefor so far as travelling easterly to the city limits is concerned. That is to say, the 5-cent cash fare would apply on this movement.

Within the limits of Zone B, provision is proposed to be made for ten tickets for a quarter. This would enable an individual buying ten tickets for a quarter to travel within either zone for $2\frac{1}{2}$ cents. If he desires to travel from one zone to another zone, the result would be that he would pay 5 cents.

While there is a certain amount of traffic originating and ending on the Britannia line, the Board has never had before it any figures setting out in a satisfactory conclusive manner just what this traffic amounts to. Under what is proposed, this traffic local to the Britannia line will be treated as inter-zone

traffic. The impression left by such evidence as has been before the Board in previous cases is that the inter-zone traffic is not important in amount. In the presentation made before the Board in this and in other cases, what was emphasized was the question of the fare from a point on the Britannia line to the city.

It is a matter of knowledge that there has been a very considerable residential development west of the westerly limits of the city of Ottawa. where, at one time, the traffic was to a great extent concerned with that of residents in summer cottages, there has more recently been an increase in the number of those living all the year round in the territory west of the city limits and east of Britannia. Consequently, it is a question of travel to and from the city of Ottawa which is important.

The proposition to decrease the rate from eight- for a quarter to $2\frac{1}{2}$ cents per ticket means a reduction of five-eighths of a cent. On the other hand, in Zone B it means an increase of $1\frac{1}{8}$ cents over the yellow ticket rate.

Other applications which the Board has had before it have been predicated on the basis that the Britannia line was not making an adequate return. When the matter was before the Board in 1919, the then Chief Commissioner, Sir Henry L. Drayton, held that if the Britannia line had been dealt with separately it was clearly established that its returns were inadequate. The Supreme Court, in its answers to the stated case which was submitted to it, stated in substance, *inter alia*, that the section of line west from Holland avenue had to be looked at separately from the city system.

Following this, provision for increase of fares was made by the Ottawa Electric Company, which filed a tariff outlining the proposed increases. This was dealt with in the judgment of 1920, in which the late Chief Commissioner Carvell authorized an increase. In the 1920 decision, the matter was dealt with as one involving a necessary increase of revenue for the Ottawa Electric Railway Company.

When the tariff herein concerned was filed, communications were received from various interested parties. A letter dated March 10, 1925, was received from the Clerk of Nepean intimating that the township council might wish to be represented. Under date of March 21, there was forwarded to the Board a resolution from the trustees of the police village of Westboro which reads as follows:—

"Resolved: That this incorporated Board of Trustees of the police village of Westboro place themselves on record as being in accord with the proposed tariff submitted by the Ottawa Electric Railway to the Board of Railway Commissioners, in so far as the tariff applies to the zone east of McKellar, and further do express our appreciation for their having taken this matter under consideration to the relief of the thousands of people residing within this area."

In the covering letter, it was alleged that the large majority of the people on the Britannia extension reside east of McKellar. It was stated that at least 5,000 reside within one mile of the present city limits; and it was set out that the proposed adjustment of the tariff by the Ottawa Electric Railway was "more than welcomed by us."

Under date of March 24, counsel for the township of Nepean filed objections to the increase. Under date of March 31, there was forwarded to the Board a letter from Mr. H. L. Carson, Secretary of the McKellar Citizens' Association, enclosing resolution in favour of the reduced fare proposed by the railway. The residents west of McKellar filed by counsel, under date of April 1, objection to the proposed arrangement, taking the position that there was no valid reason for the change from the tariff, or for the zoning proposed.

It is to be noted that the present application is not predicated on the contention that the revenues of this section of the line are inadequate and that, therefore, there should be an increase in rates. What is put forward is that on the basis of the traffic analysis which has been made, the company is of opinion that it is justifiable to divide the territory involved into two zones; and that it is, further, justifiable, having in mind the question of developing traffic, to give a reduced fare basis to Zone A as has been outlined.

It was stated by the railway that,—

“At the instance of the people living in Zone A, we have been repeatedly asked to do something about the fares out there, and we did think they were being charged a little too much because of their closeness to the city; but so long as the line is considered as one zone it will be difficult to make any change.”—*Evidence Mr. Burpee, pp. 529, 530, Vol. 440.*

Again, it is stated that the rate is looked to as one which will develop traffic.

“We hope that the lower fares between McKellar, Highland Park and Westboro, the most densely populated, will induce a great many people to ride and take the through fare to the city, instead of, as many of them do now, riding in other people’s automobiles, and so on.”—(*Ibid.* p. 372.)

Counsel for Zone A contended that the existing system was unfair, and he instanced the people living at Hilson avenue and Ottawa West, both sections being located west of the city boundary but adjacent thereto. Hilson avenue was said to be from 300 to 400 yards west and Ottawa West 150 yards from the city boundary.

It was set out that if the residents of these places desire to travel to and from the city, they have to pay for the short journey the fare which would at present take them the full journey to or from Britannia. The same situation, it was contended, applied to the vast majority of people living along the line, Westboro being specially referred to.

A period of approximately two weeks elapsed between the first and second hearing in the present application. It was contended by counsel that it was only owing to the energetic efforts of those whom he represented that the matter had been gone on with.

At the same time, the railway contends, in substance, that there are not the same conditions existing in Zone B as in Zone A and that it is justifiable to eliminate the yellow tickets.

The question, then, as presented involves,—

- (a) the proposition to rearrange the zone territory substituting two zones for the existing one;
- (b) the question whether or not in the rearrangement of zones and rates it is or is not acting in a way which is unjustly discriminatory or unduly preferential.

Discussion took place at the hearing on the point whether there was a burden of proof on the railway in respect of the increase from the yellow tickets to a 5-cent cash fare. The eight-for-a-quarter rate is a special rate, and the conditions under which it was put in on the railway requires some further discussion.

The situation in regard to the burden of proof where rates are increased is that, in general, the one contesting an increased rate has to make a *prima facie* case as to the reasonableness; thereafter, the onus is shifted to the railway.

In the amendment to the Railway Act of 1919, section 331, subsection 3, dealing with “Special freight tariff advances”, was amended by the proviso,—

"That where objection to any such tariff is filed with the Board, the burden of proof justifying the proposed advances shall be upon the company filing such tariff."

This provision which placed the full burden of justification on the railway without any *prima facie* showing of unreasonableness upon the part of the individuals adversely affected, is concerned with freight rates alone; and it is apparent, therefore, under the ordinary rule of construction, that the explicit burden so placed in respect of freight rate increase not being tied up in any other section of the Act with a similar burden in respect of passenger rates, the passenger rates are left in the position that there must be a *prima facie* showing of unreasonableness before the onus is changed.

Except in so far as discrimination is concerned, it cannot be said that the matter has been attacked from the standpoint of the railway not having met the burden of any legal onus placed upon it.

In dealing with the traffic moving, an analysis was made which was filed as exhibit No. 6. This covers a period of seventy-two days from January 13 to March 31, 1925. The figures show passengers carried between Ottawa and McKellar as 70 per cent of the total. An exhibit which was filed in connection with 1918 hearing and which was based on the period September 6, 1918, to October 15, 1918, shows, when analyzed, 63 per cent, both east and west, as being between Holland avenue and McKellar.

The total traffic in the seventy-two days above referred to between Ottawa and McKellar shows 185,876½ and between Ottawa and Britannia Park, 81,027; or a total of 266,903½. The figure of ½ is due to the fact that conductors were instructed to consider children as half fares, in order to simplify their work. The passengers carried between Ottawa and McKellar, in the test period, were 70 per cent of the passengers on the Britannia line. During this period there were 39,471 yellow tickets used. Distributing these on the same percentage basis as the total traffic, 70 per cent, or 27,630, are checked against Zone A traffic, while the balance, or 11,841, are checked against Zone B. On this basis 14.8 per cent of the Zone A travellers travelled on yellow tickets, while of those with a Zone B destination or origin 14.6 per cent moved on yellow tickets. Of the total traffic moving in Zones A and B, 14.8 per cent is checked against the yellow tickets.

There was some discussion as to whether the figures for the seventy-two days in question were characteristic. One very patent criticism which, however, requires further analysis is that these traffic returns were made in the winter season when the movement might be expected to be light. Although statements have been put in at other times showing the total number of people moving in longer periods, it is difficult to get this on a comparative basis. It is admitted both by counsel for the railway and by counsel for Zone B that conditions have so changed as to render it difficult, if not impossible, to get a common basis of comparison. The development of improved highways and the expansion of motor traffic have admittedly brought about a change for which there is not a common denominator as between present and past conditions.

It is, indeed, a fair argument that detailed figures for the year would, no doubt, show a higher curve of travel in the summer than in the period which has been chosen; but this does not go to the question of what its effect would be on the yellow-ticket travellers. Summer travel may mean either ordinary outing or picnicing travel, or it may mean people taking summer cottages for the summer season. It is suggested that a true measure of demand for the yellow tickets is to be found in the residential settlement the year round, and not in such addition to traffic as may be made during the summer months. The summer traffic, it would appear, would to a greater extent than the residential traffic find it convenient to travel at hours not covered by the yellow tickets.

In regard to the travel, those who are resident on the line and working in offices in the city may at present use the workmen's tickets on the trip eastward and westward. It is improbable, however, that any large number of office workers make use of the tickets in the earlier morning hours to come into the city. In the case of summer traffic, there is a further consideration in regard to westbound traffic. In so far at least as a part of the summer is concerned, civil servants spending the summer in their cottages on the Britannia line have the advantage of the four o'clock hours in the afternoon; and it is not to be expected that under such conditions many people will wait around until the hour when the yellow tickets are effective.

On the whole, then, while the figures given on the seventy-two days' computation may not afford an exact measure of the total traffic moving in the summer, it would seem to be fair to conclude that they afford a reasonably fair measure of the yellow ticket traffic which will be affected by the change.

In dealing with electric radial lines, the Board has fixed standard passenger fares now standing at 2.875 cents per mile. In the judgment by ex-Chief Commissioner Drayton in 1919, the Ottawa Electric Railway Company was spoken of as not being a radial line, but as being in reality an urban system with feeders. In the same judgment, it was held that the situation arising in this connection presented conditions so different from those which had been considered in other judgments of the Board as to render the Ottawa Electric Railway situation readily distinguishable; and reference was made to the fact that the Ottawa Electric Railway Company applied a flat rate to all using its facilities and without regard to the actual value of the service rendered, for which a particular fare was paid; and it was urged that the system should be look at as a whole.

In answer to the questions submitted to it, the Supreme Court held *inter alia* that the Board had not the right to treat the company's operations as a whole and continue the existing tariff. It was further held that for the purpose of computing the toll to be charged to passengers upon the Britannia section the point of commencement of the said extension should be considered to be at Holland avenue.

The effect of the decision of the Supreme Court was recognized in tariffs which were thereafter filed by the railway, which came before the Board in 1920 for judgment.

In the judgment of 1919, it was held that the city rates could not be revised downwards. This was because of an existing agreement which had been ratified by Parliament. The judgment of the late Chief Commissioner Carvell pointed out that the part of line from Holland avenue west was not subject to agreement.

In the application following the decision of the Supreme Court, the Street Railway Company proposed to eliminate the yellow tickets, and also to subdivide the zone between the western boundary of the city and Britannia in the same way as is at present proposed.

It is now argued by counsel for Zone B that the subdivided zone system as proposed is not in accordance with the scheme of the Ottawa Electric Railway Company, the scheme being one of a general flat rate of 5 cents.

The late Chief Commissioner Carvell in his judgment of April 19, 1920, gave a direction in regard to the yellow tickets being used on the Britannia line. The wording of the judgment is significant:—

“ . . . I think it not unreasonable that the same conditions should prevail as to the workmen's tickets . . . on the extensions as prevail on the rest of the system, and I, therefore, find that the fare to workmen from any point between Britannia and Holland avenue from the first morning trip until 7.30 a.m., and between 5 p.m. and 6.30 p.m. shall be thirty-three tickets for \$1, or eight for a quarter.”

It would appear from the wording of the extract above given—note the words “same conditions should prevail . . . on the extensions as prevail on the rest of the system . . .”—that it was the existence of the arrangement on the rest of the system which had weight with the late Chief Commissioner.

In the agreement of January 25, 1924, confirmed by 14-15, George V, chapter 84, the yellow tickets were left out of the said agreement, and whatever argument there might be based on the use of these tickets in the city, although under agreement, as a criterion of rates to be applied elsewhere would seem to me to vanish.

Details as to the traffic during the test period of seventy-two days have been given. There is in that period an average number of passengers per day amounting to 3,707; an average in Zone A of 2,582, in Zone B of 1,125; and contained within this average is the average of passengers per day using the limited tickets amounting to 384 in Zone A and to 164 in Zone B. The percentage is arrived at by allotting to Zone A, for example, the same percentage of yellow ticket fares as it has of total fares. The railway computes on the 164 tickets in Zone B the difference between 5 cents and $3\frac{1}{2}$ cents would amount to 1.875 cents, or \$3.07 per day.

The figures when analyzed show that there was a limited use of these tickets on Sunday amounting to 299 all told, and that in the case of Saturdays the average use was much less than on other week days. The number varies from 287 to 496, with an average of 369 per day. As, however, the detail of the subdivision of this difference between the two zones is not available, further analysis is unnecessary.

Applying the average of \$3.07 per day to the annual travel, this would amount, on a year so extended, to \$1,123 of an increase. This is subject to the criticism already referred to in respect of the period in question not being characteristic. On the other hand, the re-arrangements of fares proposed in Zone A would, on the figures submitted for the test period, work out a decrease in revenue per day of \$57.33. Extending this for a yearly period would give a figure of \$20,925. On this computation, on the traffic figures of the test period, there would in one year be a reduction of \$19,802 on the traffic earnings of the two zones.

One of the questions submitted to the Supreme Court was,—

“or must the Board permit the filing of tariffs on a mileage basis covering services on the Britannia line without reference to the larger part of the system covered by municipal agreement?”

The Supreme Court answered: “Yes, though not necessarily on a mileage basis.”

As a test of what the rates may mean, I think a mileage basis may be referred to. The fact that there are flat rates in the city of Ottawa, under agreement, does not seem to me to make this a conclusive measure; and it is further to be noted that it is specifically set out that the rates so contained in the agreement cannot be subject to the revision of the Board until at least a period of five years has elapsed. See clause 4, subclause (b), and clause 9, subclause (b).

The Supreme Court dealt with the Britannia line as beginning at Holland avenue. The fares set out in clause 4, subclause (a) of the existing agreement are by clause 4, subclause (c) to be applicable *inter alia* “on the company’s transportation system now or hereafter constructed or operated within the present limits of the city.”

Under the agreement, as limited, the jurisdiction of the Board begins for the purposes of the present application at the westerly city limits.

From Holland avenue to McKellar is 2.02 miles; from McKellar to Britannia is 2.24 miles; giving a total mileage of 4.26 miles. Included in this, however, is the section between Holland avenue and Granville avenue, at the

westerly limits of the city, a distance of 2,000 feet, or approximately .39 of a mile. This leaves a distance of 3.87 miles over which the Board has jurisdiction.

It was urged very strongly by council for Zone A, which was supporting the proposition of the railway, that hitherto Zone A, while closer to the city, had paid a higher proportionate rate than Britannia. On the basis of eight for a quarter tickets and on the mileage of 2.02 from Holland avenue, McKellar was paying 1.54 cents per mile, while Britannia was paying .733 cents per mile. While the yellow tickets have been spoken of throughout as being eight for a quarter, they are also sold at 33 for \$1, or a rate of 3.03 cents per ticket. On this basis, the mileage of 2.02 miles up to McKellar would pay 1.50 cents per mile, while to Britannia it was .711 cents per mile.

In computing the rate charged under the proposed arrangement, the Board must recognize, for the reasons mentioned, the territory coming within its powers at present as being Zone A, amounting to 2.02 miles, minus .39, or 1.69 miles, and Zone B amounting to 2.24 miles—a total of 3.87 miles.

Zone A, at a rate of $2\frac{1}{2}$ cents for 1.63 miles, has a charge of 1.53 cents per mile. Zone B, for a total mileage of 3.87 miles, pays 5 cents, which amounts to 1.29 cents per mile.

In an Exhibit No. 8 prepared by Mr. McRae, the assessor, Zone A is shown with a population of 5,322; and there are in addition 100 summer homes. Zone B is shown with a population of 1,217, and there are in addition 320 summer homes.

The application of a single zone rate to the territory west of the city limits has grown up, as pointed out, through custom and not through any burden imposed by the Railway Act. The general basis of passenger rates under the Railway Act is that of mileage. At the same time, the Board, and other regulative tribunals, has recognized that zone fares of tolls may be charged, subject to the condition that they shall not be discriminatory.

As already indicated, the rate which it is proposed to install is one which it is hoped will develop traffic. The Board has held that a railway, subject to inhibitions as to unjust discrimination, may give a reduced rate basis to develop traffic.

Application of District Board of Trade, Coalhurst, Alta., File 24470. Board's Judgments and Orders, Vol. XIII, 259 at p. 260.

What is involved in the present application falls, in respect of the limited type of tickets concerned, within the category of commutation rates; and the principles applicable to the consideration of allegations of discrimination in connection with commutation rates in general are equally applicable in the case of the yellow tickets herein involved. Difference in the treatment of different places is not necessarily unjust discrimination, and in the absence of affirmative evidence of actual discrimination, resulting in the positive detriment to a place to which such tolls are refused, the Board will not interfere.

Massiah vs. C.P.R., 17 Can. Ry. Cas. 88.

City of Toronto and Town of Brampton vs. G.T.R. and C.P.R., 11 Can. Ry. Cas., 370.

Wegenast vs. G.T.R. Co., 8 Can. Ry. Cas., 42.

It would appear to me that when, as pointed out, the railway is not prevented from establishing its rates on the mileage basis, although it may from the standpoint of public convenience, density of traffic, etc., establish them on a zone basis, and when it exercises, or endeavours to exercise, this discretion in regard to rezoning, there is also the burden on those opposing the change to show in what way the rate reacts to their detriment.

While one witness for Zone B alleged that the proposed re-arrangement would be detrimental to that zone, he gave no conclusive evidence justifying us in arriving at the conclusion for which he contended.

I am of the opinion that a *prima facie* case either of unreasonableness of rate or of discrimination against the railway has not been established. I am further of opinion that considering the analysis of traffic, the nature of travel, and the density of settlement, the re-arrangement proposed by the railway is not an unreasonable or unjustly discriminatory one and that it should be allowed.

In regard to yellow tickets still outstanding, I am of the opinion that the same provision should prevail as is set out in Order No. 34748 of February 13, 1924, namely, that said tickets shall be redeemed by the applicant company at their original cost, on presentation at its offices, 248 Albert street, in the city of Ottawa, or accepted by the conductors of its street cars, if presented singly, at a value of three cents each.

June 5, 1925.

Chief Commissioner McKeown and Commissioners Boyce and Oliver concurred.

Application of the Robin Hood Mills, Ltd., for a ruling of the Board in the matter of refusal of the Canadian Pacific Railway Co. to entertain claims on cars of flour destined for Wheat Export Company, Montreal, for export, shipped April 1, 1918, and thereafter on transit which originated at points in Western Canada, between November 14, 1917, and April 1, 1918, the railway company claiming that between these dates their all-rail tariff to Montreal for export, E-3023, C.R.C. E-3346, was not effective, same having been automatically cancelled on November 14, 1917, by cancellation clause.

File 8641.3

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of December 31, 1924, the Board was written to as follows by the Robin Hood Mills, Limited:—

“Referring to Board’s General Order 234 of May 22, 1918, also to Board’s Order 32195 of March 6, 1922, File 8641.3, our application for ruling as to whether sections 1 and 2 of General Order 234 were applicable to milling in transit regulations on shipments destined to east of Port Arthur, Fort William or Armstrong, Ont.

“On consideration of our claims under these orders, the Canadian Pacific Railway advise that they cannot entertain claims on cars of our flour destined for Wheat Export Co., Montreal, for export, shipped April 1, 1918, and thereafter on transit which originated at points in Western Canada between November 14, 1917, and April 1, 1918, offering as a reason for this that between these dates their all-rail tariff to Montreal for export, E-3023, C.R.C. E-3346, was not effective having been automatically cancelled on November 14, 1917, by cancellation clause as contained therein.

“Our understanding is that under Board’s Order 234 of May 22, 1918, Order 32195 of March 6, 1922, where transit originated in Western Canada prior to March 15, 1918, we were entitled to the balance of the old rate from point of origin of the grain to the final destination of the product whether it be in Western or Eastern Canada.

"We do not believe it was the intention of the Board when accepting into their files, Canadian Pacific Tariff E-3023, C.R.C. E-3346, that the automatic cancellation clause as contained on the face thereof would restrict the application or value of transit, or in any way conflict with the transit regulations as contained in Canadian Pacific Tariff W-3821, C.R.C. E-2218, filed as of April 10, 1917.

"We would also point out that this cancellation clause appeared in several tariffs previous to their issue E-3023, C.R.C. E-3346, but it was not until April 25, 1924, when considering our claim under your orders as above mentioned that the Canadian Pacific in their letter, original attached, raised this question. In fact, the Canadian Pacific Traffic and Claims Department had our claims with all details of transit application under consideration for a period of five years and no exception was taken thereto, and we do not therefore understand why, at this date and on this particular claim, they should take exception to the use of this transit on Montreal for export cars. Had they, at any previous date, intimated that they would not permit the application of transit originating at a time when the port of Montreal was closed to navigation or not have established a precedent as they did, we would then have been in a position to have obtained full value on this transit by using transit prior to November 14, 1917, on this movement and using the transit in question to West St. John or on domestic traffic and we do not think it was the Boards intention that the feature as raised by the Canadian Pacific Traffic officials should affect the value of transit so long as that transit is used under transit regulations as laid down by the Board in Tariff W-3821, C.R.C. E-2218; and we would like ruling from the Board in this connection."

The matter was taken up with the railway for the filing of its submission, and when this was received copy of same was sent forward to the Robin Hood Mills, Limited, which filed a reply reading as follows:—

"In reference to the above, your letter of March 2 enclosing copy of Mr. Flintoft's letter February 27.

"We have perused carefully this letter but cannot find that Mr. Flintoft has covered any new ground.

"He is quite correct in stating that under Board's Order 234 of May 22, 1918, read in conjunction with Board's Order 32195, of March 6, 1922, the correct rates applicable on milling in transit shipments were those in effect from point of origin of the grain to final destination of its product. He is also correct in stating that the question arises in connection with shipments of grain which originated at western points between November 14, 1917, and April 15, 1918, and on which the transit covering such grain was applied on shipments of flour shipped to Montreal for export from Moose Jaw and Calgary plants subsequent to April 15, 1918, and that we claim application of the 21½-cent rate as provided for in C.P.R. Tariff E-3023, C.R.C. E-3346.

"(1) What we wish to make clear is that Tariff W-3821 C.R.C. 2218 carried transit privileges as sanctioned and interpreted by the Board making applicable through rate from point of origin of the grain to final destination of its product if shipped within a period of six months; and we feel that it was not the intention of the Board to accept into its files a tariff or tariffs covering proportionate rates on grain and grain products from Fort William to Montreal for export with a cancellation clause restricting the value of transit where same used within the six-month period and under regulations as prescribed by the Board.

"(2) We would again point out that this same cancellation clause was contained in several issues applying on grain and grain products from Fort William to Montreal for export issued prior to E-3023, C.R.C. E-3346, but at no time previous to Mr. Steele's letter of April 25, 1924, or for that matter subsequent thereto did the Canadian Pacific traffic officials take objection to the application of transit on cars destined Montreal for export shipped after the opening of navigation but where the transit and the grain originated in Western Canada at a time when the port of Montreal was closed to navigation.

"(3) As we see it, the Board certainly would not permit a clause restricting the value of cancellation as provided for in tariff W-3821 C.R.C.-2218, and further had the Canadian Pacific traffic officials objected to or pointed out that it was not permissible for us to use this transit, shippers would have been given an opportunity to get ruling from the Board before using the transit which originated in Western Canada at a time when the port of Montreal was closed, and they would have used other transit that originated prior to November 14, 1917, of the same value that could have applied on this traffic, and used the transit that was used to Montreal to West St. John or some other point.

"(4) As a matter of fact, on March 15, 1918, when Board's Order 234 became effective, we had in store and in transit both at and to Calgary and at and to Moose Jaw several million pounds of transit that originated prior to March 15, 1918, and which under the Board's orders referred to we could have used either on domestic or export traffic to Eastern Canadian points applying the old through rates as in effect on the date transit originated and had the Canadian Pacific traffic officials objected or pointed out then as they did in Mr. Steele's letter of April 25, 1924, that the transit originating between November 14, 1917, and April 15, 1918, could not be used to Montreal for export at the old through rate, or had this ruling been effective on previous movements as covered by previous issues, we would, as stated, have used other transit that would have given us the old rate and have used the transit we did to Montreal for export or on other domestic traffic.

"(5) As a matter of fact, the Canadian Pacific Traffic officials will find on reference to their file that we used after April 15, 1918, millions of pounds of transit that originated in Western Canada prior to November 14, 1917, and which could just as easily have been used on this Montreal for export business.

"(6) We note Mr. Flintoft gives reference to General Order 398 of April 11, 1924, which provides under section 36 that a tariff or supplement having once been cancelled cannot be restored, and that if it is desired to reinstate rates previously abrogated, same must be covered by an entirely new schedule.

"(7) This order was not issued until April 11, 1924, whereas the tariffs under discussion were effective in 1917, and the movement took place after April 15, 1918, so the order in question is not applicable.

"Summing up the entire matter as we see it, it would seem:—

"1. That the carriers were at fault in filing a proportionate tariff from Fort William to Montreal for export with a cancellation clause that restricted the value of the transit or cancelled in any way the transit privileges as contained in Western Lines tariff W-3821, C.R.C. W-2218 and which had been previously on file with the Board.

"2. The carriers established a precedent of permitting the use of such cancellation under former issues of tariffs carrying the same cancellation clause, and no exception was taken to the use of cancellation,

presumably on the assumption that where cancellation was applied within the six months' period, as prescribed in transit regulations sanctioned by the Board, that same was correct.

"3. As stated, we had several million pounds of transit available on grain in store and en route shipped prior to March 15, 1918, all of which when used east of Fort William we were entitled to the old rate on, or where the new rate applied refund to the basis of the old rate. All of this transit had the same refund value where the new rate applied whether shipped to Montreal for export, West St. John for export or domestically.

"4. We further submit that carriers' tariffs relating to the transit arrangement and as in effect prior to March 15, 1918, were ambiguous; and this is borne out by the fact that carriers themselves did not correctly interpret neither tariffs west or east of Fort William as applying on grain and grain products and it was only after Board's orders referred to in this letter that application was clear. In view thereof and in line with Board's previous rulings we feel that such tariffs should properly be used in the ease of shippers."

After consideration of these submissions, the following interim report of the Board's Traffic Department was issued, the applicant being advised that written exceptions thereto might be filed by him within three weeks. The report with this notification went forward to the applicant under date of March 30, 1925.

Under date of April 9, 1925, the Board was advised by the Robin Hood Mills, Limited, that written exceptions would be forwarded by it within the specified three weeks.

This matter has been standing for filing of exceptions; none have been received; and I am, therefore, of the opinion that the following interim report may now be accepted as final judgment:—

"I have numbered the paragraphs of the letter from the Robin Hood Mills, Limited, dated March 11, and reply seriatim as follows:—

"1. The Robin Hood Mills, Limited, are correct in their statement as to the provision of Canadian Pacific Railway's tariff C.R.C. No. W-2218. The tariff is to be used in connection with traffic via Montreal and various Atlantic ports. During certain portions of the year, it is a physical impossibility to export via Montreal; but other ports are open the year round and complainants could have exported via such ports. There is nothing unlawful in cancelling the Montreal tariff during close of navigation, as otherwise the company would have rates in effect for a service which they were unable to perform.

"The transit arrangements were established to place various mills on an equality. During the period November 15, 1917, to April 14, 1918, it was impossible for any flour mill to export direct via Montreal at rates named in the cancelled tariff, C.R.C. No. E-3346. How then can the Robin Hood Mills, Limited, expect to obtain the benefit of such rates?

"2. I find that with the exception of the period covered by the complaint, the rates on flour from Fort William to Montreal for export from 1917 to date have been the same upon the opening of navigation as were in effect at close of the previous year, so that no dispute could arise in connection with the proper rate to be applied, and there is therefore no evidence of misinterpretation or wrongful application of tariff by the railway.

"3, 4 and 5. It is unfortunate that complainants made use of transit grain originating during the period of closed navigation via Montreal, instead of using some of the million pounds referred to which originated prior to November 14, 1917.

"6 and 7. It is true that General Order No. 398, quoted by Mr. Flintoft, was issued subsequent to the date of the shipments under discussion, but this order merely officially approved and gave general notice of a practice which has been in effect since the inception of the Board and previously promulgated by correspondence in individual cases.

"As no tariff was in effect from the head-of-lakes to Montreal for export during the period in which the grain was forwarded from point of origin, the company, under General Order No. 234, and interpreting Order No. 32195, might have charged the local rate to Montreal plus terminal, or a total through rate $\frac{1}{2}$ cent higher than was charged by using the export rate from Fort William that was in effect on the date of arrival of the flour at that point.

"In my opinion, the company have charged rates legally in effect and the application of the Robin Hood Mills, Limited, should therefore be dismissed."

June 8, 1925.

Chief Commissioner McKeown and Commissioner Boyce concurred.

Application of the residents of the County of Wolfe, P.Q., for an Order directing the Quebec Central Railway Company to install telephone service in its station at Bishop's Crossing, P.Q.

File No. 8883.7.3

Application of the residents of the County of Wolfe, P.Q., for an Order directing the Quebec Central Railway Company to install telephone service in its station at Dudswell Junction, P.Q.

File No. 8883.7.4

Application of the residents of the County of Wolfe, P.Q., for an Order directing the Quebec Central Railway Company to install telephone service in its station at Marbleton, P.Q.

File No. 8883.7.5

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner:*

This is an application of certain citizens of the County of Wolfe, P.Q., for an order directing the Quebec Central Railway Company to install telephone service in its stations at Bishop's Crossing, Dudswell Junction, and Marbleton.

At the hearing in Montreal the matter was spoken to by Mr. Crepeau, who appeared for the applicants at Bishop's Crossing and Marbleton, and Mr. George Woods, representing the Quebec Central Railway Company. The application was not pressed as far as concerns Dudswell Junction.

The applicants relied in support of their motion upon subsection 2 of section 371 of the Railway Act of 1919, which reads:—

"The Board may also upon the application of any interested party authorize any telephone company operated by any province, municipality or incorporated company to install at its own expense telephone connection with any station of the company, the annual charge, if any, to be paid by the company for such service and all other terms or conditions connected therewith to be such as the Board may determine, having regard to all local conditions, but in no case is such charge to exceed the customary local rate."

From the subsection above quoted, it is apparent that the Board is not empowered to direct a telephone company to install a service. Its power is simply to authorize said company to install such service.

The annual charge for the telephone connection, as well as whatever other terms and conditions the Board may deem necessary, are matters for consideration and determination by the Board. Consequently, the telephone company against which such order is sought should be notified to appear at the hearing at which such terms are discussed. From the wording of the subsection it is clear that the Board might authorize the telephone company to supply an instrument without any annual charge.

No one appeared at the hearing for the telephone company, but a letter from the general manager was filed, in which he expressed a willingness to have the instrument installed, if somebody would pay for it. The whole dispute in this matter concerns the payment for the service applied for. The applicants ask that the railway company be ordered to have a telephone placed at the stations indicated, but say nothing as to who shall be liable for the service. The telephone company says it is willing to put in the service if somebody will pay for it. The railway company's answer is that it has no objection to the telephone being installed, but that it will not agree to pay for the service provided, and the section of the Act above referred to throws the burden of deciding this question upon the Board.

I do not think the Board has authority to direct the railway company to install the telephone service. The application should be to authorize the telephone company in question to install telephone connection in the stations mentioned, and for general directions with reference to the annual charge and all other terms and conditions connected therewith, as indicated in subsection 2 of section 371 of the Railway Act, and the telephone company should be notified to appear in answer to the application. While the absence of formalities is not regarded as serious, yet as the telephone company was not summoned to appear, and did not appear, at the argument, I feel, in the absence of anyone to speak for it, that no order should be made.

The applications against the Quebec Central Railway Company must be refused.

OTTAWA, June 22, 1925.

Assistant Chief Commissioner McLean and Commissioner Boyce concurred.

ORDER No. 36471

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, 1919, for approval of its Standard Mileage Freight Tariff, C.R.C. No. 2980, on file with the Board under file No. 1067.

TUESDAY, the 16th day of June, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Mileage Freight Tariff, C.R.C. No. 2980, on file with the Board under file No. 1067, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Municipal Council of the Town of Ingersoll, Ontario, under Section 228 for the privilege of interswitching on the premises known as the Noxon property, Grand Trunk Railway and Canadian Pacific Railway.

File 6713.5

Heard at Ottawa, Ontario, April 1, 1924.

JUDGMENT

COMMISSIONER BOYCE:

This application for the establishment of a public interchange between the tracks of the Canadian Pacific and Canadian National Railways is a renewal, by permission of the Board, of a former application made to the Board for interchange between the same railways at the same point, in the same town, and which former application was heard by the Board at Hamilton, Ontario, October 29, 1919, and on which application no order was made for the following reasons, stated at the close of the case, by the late Chief Commissioner, who presided. (Volume 313, pp. 9259-60):—

“It seems to me that until such time as either one of the railway companies owns this land, we have no jurisdiction to make an order against them. . . . What I would suggest is that you take legal advice and when you are satisfied that you have a plan worked out, come back to the Board and we will listen to you.”

On May 30, 1923, the Corporation of the Town of Ingersoll renewed the application, alleging that the objection as to ownership of the land, just above referred to had been removed, and that, as they submitted, the Canadian National Railway had acquired the property in question, and that any order made in regard to interswitching would, under the changed conditions, cover property which was under the control of one or other of the railways concerned, and therefore, “subject to the order of the Board.” The submissions of the two railway companies were then obtained upon this alleged changed situation, and, amongst others, were submissions on behalf of the Canadian National Railways, under date January 17, and March 3, 1924, the former containing the statement:—

"So that the Board will now have jurisdiction, we have arranged with the John Morrow Company for a lease of the necessary property at a rental of \$100 a year for the purpose of constructing the interchange track thereon, the lease to be executed upon the Board agreeing to the interchange being installed."

And, in the latter submission, on behalf of the Canadian National of March 3, 1924:—

"The facts are that the Canadian National track where the transfer is proposed is entirely the property of the railway. It is not a private spur, and the so-called Canadian Pacific Railway line is also a private spur, but on the contrary is the joint property of the two railways; the Canadian National having paid for one-half of the cost of its construction."

There was also submitted, in connection with these submissions as to changed conditions as to the proprietorship, justifying the rehearing asked by the municipal corporation, and supported by the Canadian National Railways, a copy of the agreement, dated November 10, 1910, between the Canadian Pacific and the Grand Trunk Railways, as to the joint operation of the spur in question "for the purpose of reaching the premises of the Noxon Company, Limited."

Upon these submissions the Board directed a rehearing, which took place at Ottawa, April 1, 1924, when the whole situation was fully discussed.

By Order of the Board No. 14819, dated August 1, 1911, upon the application of the citizens, merchants and manufacturers of the town of Ingersoll, interchange of traffic between the Canadian Pacific and the Grand Trunk Railways was ordered, such interchange being located north of the river Thames, and was built and operated. There was no interchange south of the river, and growth of industries in that part of the town it was said demonstrated that interchange was desirable south of the river because the connection made to the north of the river limited the interchange as regards Canadian Pacific lines to the St. Mary's Division, while an interchange of traffic to the south of the river would permit of a general interchange of traffic on both lines.

The application heard by the Board in October, 1919, and on which no order was made for the reasons given, and now before the Board, as a rehearing, is, on behalf of the municipal corporation of the town of Ingersoll, for an order to so connect the branches or spurs of the two railways where they come together on the property of the Noxon Company, south of the river in the manner proposed by the plan and indicated thereon, as to form a public interchange between the two railway companies.

Prior to 1909 the Grand Trunk tracks did not serve the Noxon industry south of the river. The railway made an application, July 27, 1909, upon consent filed of the Noxon Company, submitted therewith,—

"Authorizing the construction, maintenance, and operation of the siding and spur, and to connect the same with and operate this company's engines and cars over two railway sidings belonging to the Noxon Company, shewn on the plan."

This application was the expression of the desire of the Grand Trunk, as shewn in the proceedings, to build a spur from its line north of the river, across to the South to connect with and serve the private sidings (two) of the Noxon Company, then in existence and served by the Canadian Pacific Railway. The latter company vigorously opposed the application on the ground that the proposals of the Grand Trunk, as shewn on their plan, involved crossing one and connecting with another of the spurs of that company serving the Noxon Company's plant, and at a hearing, at Ottawa, on September 14, 1909, the application was dismissed with leave to renew it.

Application was renewed, under date October 20, 1909, and by the letter accompanying the application, it is made quite clear, I think, that what the railway company was asking for was the approval of plans for "a spur into the premises of the Noxon Company, Ingersoll."

The application being referred to the Chief Operating Officer of the Board, the application was by him approved, upon the condition that the railway companies concerned mutually arranged for the joint usage of that portion of the sidings of the Canadian Pacific leading to the Noxon Company building, and Order No. 8546 issued November 3, 1909, authorizing the construction, under sections 176 and 222 of the Railway Act, then in force, of a branch line, or siding, and a spur therefrom, according to plan filed, with the provision that the portion of the proposed siding of the Canadian Pacific leading to the Noxon Company be operated and maintained jointly by the two companies, under a mutual agreement, and that if no agreement was reached, terms to be settled by the Board.

Under date December 3, 1909, the Board was advised by the Grand Trunk that the spur was now completed and was waiting inspection by the Board's Engineer, but upon reference to the Engineer of the Board, and with the sanction of the Board, the solicitor of the Grand Trunk was advised, under date December 7, 1909, that it was not the practice of the Board to inspect spurs as they are not built for general traffic.

It appears clear that the intention of the Grand Trunk in making both applications was to obtain switching facilities into the premises of the Noxon Company, and for that purpose they had to build from their main line across the river the tracks as shown on the plan. In a letter of August 7, 1909, from the Grand Trunk, predecessors in title of the Canadian National Railway, on file, these tracks are referred to as being simply switching tracks and the whole tenor of the two applications with reference to them, as well as the plan, indicates that no matter under what sections of the Railway Act the connection was sought to be authorized, the intent was, to build a spur to connect the Noxon Company's spurs, then in existence and then served by the Canadian Pacific Railway, with the main line of the Grand Trunk north of the river.

The situation, as I view it, is, substantially, that which is referred to in the judgment of the Board in the case of *Beverly Coal Mine and Humberstone Coal Cos. v. Grand Trunk Pacific Railway Company*; 23 C.R.C., p. 64, at p. 69, and also dealt with in the cases therein referred to.

Under date November 10, 1911, an agreement was entered into between the two railway companies, apparently as a basis of the joint operation, contemplated by the last clause of Order No. 8546, just referred to, and which order is therein referred to. The agreement emphasizes, what was heretofore quite apparent, that the object of the Grand Trunk in building the branch, or spur, across the Thames river, as authorized by the last mentioned order, was, as stated in the opening words of clause 1 of the agreement, "For the purpose of reaching the premises of the Noxon Company, Limited, etc."

The agreement provides that, for such purpose,—

(a) The Canadian Pacific agrees to allow the Grand Trunk to use and operate, jointly with it, the portions of the sidings of the former company which the latter company is by Order No. 8546 authorized to use and operate;

(b) The Grand Trunk to pay the Canadian Pacific, on execution of the agreement, \$1,640.41; being one-half of the cost incurred by the Canadian Pacific, in the construction of those portions of the joint track "situated upon the lands of the Noxon Company Limited."

(c) The Grand Trunk to pay semi-annually, interest at 5 per cent on \$293.78; being one-half cost to Canadian Pacific Railway of con-

struction of those portions of the joint tracks, on the lands of the Canadian Pacific Railway, and also to pay monthly one-half of the entire cost and maintenance of the joint tracks; and

(d) The Grand Trunk to install, and maintain at its own expense, the diamond and switches necessary for the crossing of the Canadian Pacific Railway spur; cost of construction, maintenance, and operation, of any signals, or protective appliances which might be required at the crossing, to be borne equally.

The effect of this agreement, as I understand it, was to place the two companies upon an equal basis, as regards the joint use of the portions of the sidings leading to the Noxon Company, and which it was necessary for the Grand Trunk to use in order to secure access to that property, with its spur or branch line. I think the agreement went no further than that, and that thereafter there was established, in pursuance of the Order (No. 8546), a basis for the joint operation by the two railway companies of the spurs leading into and serving the Noxon Company.

The application of the Grand Trunk, to the Board, for the permission granted by Order No. 8546, became thereby perfected, and completed its efforts, as set forth, to reach the property of the Noxon Company, south of the river Thames, which was the only object it could have had in making the original application, to the Board.

It is to be noted in the first clause (a), provision is made for joint operation of the portion of the "sidings" of the Canadian Pacific, leading to the premises, and which "sidings" are shown on the yellow lines, on the plan: clause (b) provides for the payment, by the Grand Trunk, to the Canadian Pacific of the interest upon the investment of the latter, in the construction of the portions of the joint tracks, which are situate upon the lands of the Noxon Company; and, clause (c) is applicable to the payment of interest upon cost incurred by the Canadian Pacific in the construction of so much of the joint tracks as are on the lands of the Canadian Pacific.

Following the making of Order No. 8546, an application, dated December 17, 1909, was made to the Board by citizens, merchants, and manufacturers of Ingersoll, for an interchange of traffic south of the river between the two railways above referred to, and the proceedings show that the point of interchange was practically precisely the same as that now indicated, viz., by a junction of the tracks upon the lands of the Noxon Company, which were served jointly by the two railways under the provisions of Order No. 8546 and the agreement mentioned. This application was heard at Ingersoll May 31, 1910, and judgment was reserved in order that a joint report could be obtained from the Chief Engineer and Chief Operating Officer of the Board. These officers reported, January 16, 1911, after a careful examination into the conditions, with representatives of the Noxon Company, the town of Ingersoll, and the two railways, that they found that the physical conditions at this point were such that it was impossible to locate interchange without having the same located on, and made over, private property. The Board delivered judgment January 20, 1911, written by the then Chief Commissioner (Mabee) and concurred in by the other members of the Board who sat; and the application was dismissed for the reasons generally set forth in the report of the Board's officers above referred to. The judgment contains the following clause:—

"In the letter from the solicitors for the applicants, which came to the Board, dated December 27, 1909, it contained the following statement:—

"The Grand Trunk having built a bridge to connect with the Noxon Company, are quite content to have it used in connection with the general scheme."

"The Board's officials report that the tracks leading to the Noxon Company form a connection between the Grand Trunk and Canadian Pacific tracks, and that traffic can be interchanged over these tracks with the permission of the Noxon Company, but that they will only permit the use of their tracks on payment of one dollar for each car interchanged. Of course, if the tracks of the Noxon Company, located as they are upon private property, were used as facilities for transferring by other shippers, the Noxon Company should be compensated for such use. There is nothing to show that the applicants are willing to pay one dollar per car, or any other sum, for the use of the facilities of the Noxon Company. Therefore it would seem unreasonable, if not impossible, to use the tracks of the Noxon Company as a medium of transfer.

"The Board's officials further report that the physical conditions prevent satisfactory arrangements for interchange, and they suggest that the matter be delayed until a connection has been made between the Canadian Pacific line from Port Burwell through Ingersoll to Woodstock, and their line from Ingersoll to Code Junction."

The application was dismissed and Order No. 12786, dated January 18, 1911, was issued so disposing of it.

The next application was the application, heard at Hamilton, October 29, 1919, which met with the fate indicated in the early part of this memorandum.

With the history of the case, as above, the application came again before the Board, for rehearing, or reconsideration, of the decision of the late Chief Commissioner (Carvell) at the Hamilton sittings.

The most pertinent query to be applied to the facts, as they are now presented to us, upon the history above set out, would be as to how far the conditions have changed (a) since the decision of the Board of January 20, 1911; and (b) since the Hamilton decision of October 29, 1919.

The application for rehearing was based, as stated, upon the representation made by the corporation of the town of Ingersoll that the difficulty pointed out by the late Chief Commissioner, in disposing of the case, at Hamilton, as to ownership, had been overcome. The Canadian National Railways supported this representation in the manner above indicated. There is no suggestion that all these representations were not made in good faith. They undoubtedly were made, both by the applicant corporation and by the railway company, in its letters of January 17 and March 3, 1924, under the bona fide belief that conditions were just as represented. When counsel for the railway company ascertained, at the rehearing, that conditions were not as represented in those letters, and that the lease from the Morrow Company would not be made, counsel at once advised the Board, in writing, of the changed conditions. The fact, however, that no change in ownership appeared at the rehearing from that which existed at the time of the Hamilton hearing and disposition, is an important factor to be considered in disposing of the renewed application, based upon the representations that such conditions had changed. It is shown that the owners of the land are not only not willing to lease the same, or such part thereof as may be necessary to the railway company for the purposes of the establishment of a public interchange, but that they object to the application being granted, and evidenced their objection by their letter to the railway company quoted, in Mr. Fraser's letter to the Board of April 3, 1924, by withdrawing their written offer to so lease, and stating—"the letter was, apparently, hastily written, and the John Morrow Company today would not be willing to lease on the terms therein stated."

In a subsequent letter to the Board, dated November 12, 1924, from the solicitors of the owners, the objections are fully stated; the substance of which is that the owners object to the establishment of any public interchange on

their property, and the use of their private tracks for that purpose, unless and until the property is acquired, in fee simple, from them, and compensation is made for all the land that would necessarily be used, or would be injuriously affected by the establishment and use of such a public interchange.

The land on which the public interchange is sought to be established is subject to a mortgage deed of trust to the National Trust Company to secure an issue of bonds to the amount of one million dollars, which mortgage is duly registered, and is a first charge upon the lands. The National Trust Company (mortgagees) which was not notified of the rehearing and was not represented thereat, strenuously objected to the interchange on the property, upon the following specific grounds, stated in its letter to the Board, dated November 17, 1924:—

“1. Interswitching over the present sidings would deprive the factories now on the property of proper shipping facilities and we are advised that there is not room owing to the shape of the parcel of land for the construction of other sidings upon it.

“2. The proposal is too indefinite. We should not be asked to consent to an indefinite proposal regarding interswitching. A plan should be submitted indicating exactly the amount of land required and in that way shipping privileges for the factories on the mortgaged premises could be maintained unhampered.

“3. The proposed interswitching will very materially lessen the value of our security upon the property. Should it fall back on our hands as mortgagees, it would leave a great deal of the land absolutely valueless.”

The objections of the National Trust Company, as shown in the above letter, were communicated to the railway companies.

The applicants, during the rehearing, and when confronted with the evident recession of the owners from their original proposal to lease the land to the Canadian National, for the purpose of an interchange, relied upon a lease, dated December 23, 1918, from the John Morrow Screw and Nut Company, to the corporation of the town of Ingersoll, of the lands in question, upon which, or a portion of which, the interchange is sought to be established for a period of ten years from January 1, 1919, upon the terms and conditions in the said lease stated.

The lease recites that the corporation desires to lease the lands, premises and property, therein described, for the purpose of promoting the establishment of industries thereon. The corporation, by clause 6, is given power to sublet on such terms and conditions as may seem proper, but it is provided (clause 6) that each sub-lease made by the corporation shall provide that no business shall be carried on the lands leased which shall be deemed a nuisance to the Ingersoll File Company, Limited, or to any sub-lessee of the said lands. The John Morrow Company appear to be the successors in title of the Noxon Company, but subject to the terms of the bond mortgage.

I cannot see although it was strenuously and ingeniously argued that the lease referred to clothed the applicant corporation with necessary powers in dealing with the land, that it establishes such a title in the land, as I think is desirable in contemplating the establishment of a public interchange for the following reasons:—

(1) The lease is for a period of ten years from February 1, 1919, and therefore has less than four years to run, and does not, in its terms, give the lessees the right to establish a public interchange upon the land;

(2) The Morrow Company, since the date of the lease to the corporation, has emphatically emphasized its disapproval of the establishment of any such interchange, under such lease, or otherwise, except upon the terms which they

specify, viz: the acquisition of the fee simple of such quantum of the property as may be necessary for the establishment of the interchange, which would involve the acquisition of several acres of their land.

This indicates clearly, I think, that the user of the land by the corporation, under the lease, for establishment of a public interchange, was never intended by the lessor, and if the lessors were relied upon to give any such title, or right, in the corporation, the Board has emphatic notice that it would be objected to by the owners.

(3) The lease is subject to the legal title in the mortgagees, who hold a lien to the extent of one million dollars on the property, and, for the reasons above stated, the trustees for the bond holders emphasized their strenuous objections to the establishment of public interchange for the user, of that portion of the land for that purpose.

(4) The lease, in its terms, does not give certainty of tenure, which I think both necessary and desirable in considering the establishment, by the Board, of a public interchange on the property.

I am unable, therefore, to yield to the argument expressed by counsel for the applicants and the Canadian National, that there is right, or title, in the corporation, created by the lease, to support the application, or justify the making of the order asked for.

It would, therefore, appear that conditions as to title are the same as when the matter was heard and adjudicated upon, at Hamilton, except that the Board has before it very formidable objections by the owners of the land and the trustees of the bondholders—the legal title of which, I think, the Board must take cognizance in dealing with such an important matter as the consideration of a suitable site, or location, for the establishment of a public interchange.

The principles governing the establishment by the Board of an interchange of traffic involves, as I read the decisions of the Board upon the subject, consideration for public necessity in present traffic. Railway companies are entitled to conserve, and to hold, the traffic they build up on their individual undertaking, subject to the requirements and service of the public where they call for consideration. In such cases the business of the railway company, in the public interest, must be made subservient to the paramount interest of the public at large. It necessarily follows that, while the Board should not be slow to yield to representations of public necessity in ordering interchange, it must do so with due regard to the interests of the public to be so served thereby, and I find myself unable to see that the interests of the public, under the conditions set forth in the many representations that have been made to the Board upon this subject, will be forwarded, safeguarded, or facilitated by the ordering of a public interchange by the connection of spurs of railway companies built for and serving private industries.

I am not prepared, nor is it necessary for the purpose of deciding this issue, to go the length of saying that the Board's powers do not extend to the establishment of such an interchange, but I do find, as has been found on two previous occasions, that the circumstances and conditions under which interchange is sought at Ingersoll, are such as to render it highly undesirable that the Board should interfere and order interchange which would not only work an interference with private rights and invade private property, but could not, from the conditions, give that permanency of tenure which it is desirable to have in view of making such an order.

Counsel urged strongly upon the Board that the late Chief Commissioner varied the opinion expressed by him, as to title to land, at the Hamilton hearing in 1919. I have carefully examined and considered all that was said, both at the Hamilton sittings and at the recent sittings, and I cannot conclude that there was expressed on that occasion such a change of view as would affect the situation, as I now see it. The principles of convenience, desirability of

location, and many other discretionary features which enter into the establishment of such an interchange remain undisturbed by anything that was said, *per curiam*, by the late Chief Commissioner during the last hearing.

Mr. Fraser argued that the interchange asked for could be ordered under section 313 of the Railway Act. I do not agree with him, nor is his contention supported by the ruling of the Board. See *North Battleford Board of Trade for interchange between C.N.R. and C.P.P.*, Board's Orders and Judgments, Vol. 14, p. 229, at p. 230.

On the argument of the last-mentioned case the question as to the applicability of sections 253 and 313 was discussed at some length and critically considered. Section 313 is one of the clauses known as the "facilities" clauses, and provides for the facilities for receiving and delivering goods from different lines, at points of starting and destination. Section 253 is the interchange section, which gives the Board power to order general interswitching of traffic between two or more railways.

In the argument in the *Cut Knife Battleford Case*, above referred to, the counsel for the Canadian National Railways said that he had never heard of an application being made under the "facilities" clause for an interchange track, and he submitted that section 253 provides specifically for that. That section 253 was the empowering section, and the Board adopted that view as above.

The interchange asked for means the adoption, by the Board, of a junction of two industrial tracks of railway companies, built to serve a particular industry upon the private property of the industry, for the special purpose of enabling both railway companies to serve that industry. Manifestly the establishment of that connection for public interchange traffic would be an interference not only with the rights of the railway companies and with the industry involved, but an invasion of the rights of the property in the freehold, upon which the private tracks are built into that industry, and with prejudicial effect to surrounding land. I do not think that the Board is justified in seizing upon such a connection, established for such specific purpose, as a place suitable for the establishment of a public interchange. It is not desirable or suitable in the public interests, and it would be, undoubtedly, a serious invasion of private rights, which the Board would not, under the circumstances, be justified in ordering.

The difficulty of operating the interchange is also one which has received the close consideration of the technical officers of the Board, and has been reported upon adversely to the application.

I would observe that under section 253 of the Railway Act, which is the interchange section, the Board may, under the circumstances stated in the section, order that the lines, or tracks, of the railways concerned shall be so connected, etc., etc., as to admit of the safe and convenient transfer, or passing of engines, cars and trains, etc., from the tracks, or lines of one railway to those of another, and that such connection shall be maintained and used. I think that it is quite clear that the proposed interchange would not admit of either the safe or convenient transfer of engines, cars, or trains, from the tracks of one railway to those of another, and that the uncertainty of the tenure of the land upon which it is proposed to force an interchange, would render it impossible for the Board to order that such a connection should be maintained and used.

At the Hamilton sittings the late Chief Commissioner ruled that no order could be made upon the application, for the reasons stated in his judgment. This application, as has been stated, is for a rehearing, or renewal of that application, upon special grounds, involving the removal of the difficulty, which the late Chief Commissioner pointed out existed in the way of an order being made. The representations honestly and bona fide made were not, however,

fulfilled, and the situation remained as it was at the conclusion of the Hamilton sittings, and covered by the decision in 1911, previously referred to.

I find nothing in the shape of new material to justify the variation of either of the decisions of 1911 or 1919, and my view is, that the Board should not make the order asked for, at the point, and under the circumstances, indicated.

The application will, therefore, be dismissed.

OTTAWA, April 18, 1925.

Assistant Chief Commissioner McLean and Commissioner Lawrence concurred.

COMMISSIONER OLIVER:

This application was heard at Ottawa on April 1, 1924, by five members of the Board, Deputy Chief Commissioner Nantel being absent.

The town of Ingersoll was represented by the mayor (William English), and by Alderman Scott, acting on a resolution of the town council. Following the passage of the resolution, the matter had been dealt with in various forms, and had finally reached the stage of an application by the town council for interswitching rights between the Canadian Pacific and Canadian National Railways, on behalf of the industries situated within the town and south of the river Thames.

Ingersoll is an important industrial town. The Thames river divides it. Lines of the Canadian Pacific Railway give transportation service by that system on both sides of the river. The north side is also served by the Canadian National System. The industries north of the river enjoy interswitching advantages, while those on the south side do not.

Evidence was offered as to the disabilities suffered by these industries because of lack of interswitching facilities.

Alderman Scott stated that he was in business on the Canadian Pacific Railway main line, handling coal, grain, etc. Recently a car of oil cake was shipped to him from Baden, a Canadian National point. To get it to his place of business he had to team it nearly a mile, at a cost of from fifty to sixty cents per ton, or \$12.50 to \$15 for the car of twenty-five tons. The alternative was to pay two freights, which would have been more costly. If interswitching were allowed, the charge would have been half a cent a ton or \$2.50 for the car. In the previous year he had handled 130 to 140 cars of stuff on his tracks.

The Assistant Chief Commissioner asked Alderman Scott: "The tracks are in place; do the railway companies refuse to interswitch cars?"

Mr. Scott replied: "The Canadian National would not object; but the Canadian Pacific Railway object to handling these cars."

Mr. E. E. Kennedy, representing the Standard White Lime Company, said:—

"We have a crushing plant on the Canadian Pacific Railway at Beachville; also a lime plant on the Grand Trunk at Beachville. There being no point of interswitching at Ingersoll, we cannot ship from our crushing plant for Canadian National delivery, without the sum of two local freights. Crushed stone being a low priced commodity, cannot stand two freight rates, therefore we lose that business. . . . On the other hand, we have the same thing at our lime plant which is on the Canadian National. We might want to ship to a Canadian Pacific Railway point, which is not a competitive point, and as in the case of our crushed stone, we have two freights to pay.

"We had some business in prospect at Temiskaming, Quebec. The rate on the Canadian National from Beachville to Temiskaming over the two railroads was 27 cents; the Canadian National Railway to Woodstock, change there, thence to Temiskaming, 27 cents. On the Canadian Pacific Railway, taking the Canadian Pacific Railway through rate, it is only 23 cents, a difference of 80 cents per ton, and that was sufficient for us to lose the business. . . . Last year we produced approximately 100,000 tons (crushed stone) at Beachville. . . . We produce about three cars (of lime) a day there (Beachville), some times four cars."

Letters giving reasons in detail why the several industries mentioned desired interswitching rights were filed with the Board by Mayor English. They included the Ingersoll Machine and Tool Company, the Royal Broom Company, F. Richardson, contractor, The Ingersoll Paper Box Company, Ltd., Wm. Stone Sons (Ltd.), fertilizer, hides, wool, furs, etc.; The Wenlaw Company, planing mill, lumber yard, coal and cement.

A letter on the Board's file from the Standard White Lime Company, dated December 29, 1921, contains the following statement:—

"In December, 1919, we purchased a crusher which was shipped from Mimico (near Toronto), Grand Trunk Railway to Beachville. It duly arrived with bill attached; 50,000 pounds rate 20 cents, amount paid \$100. June 4, 1921, we had occasion to move same crusher from the Grand Trunk Railway siding at Beachville to our Canadian Pacific Railway siding at Beachville, a distance of 600 yards. It was loaded on a flat car on the Grand Trunk Railway, transferred at Woodstock to Canadian Pacific Railway, shipping bill called for 70,500 pounds and \$155.10, with 11 cent rate on both railways."

By Order of the Board dated November 3, 1909, the Grand Trunk Company was,—

"Authorized to construct, maintain and operate the said branch railway or siding and a spur therefrom, extending from a point on the applicant (Grand Trunk Railway) Company's railway, west of its Ingersoll station, in the county of Oxford in the province of Ontario, and thence across certain lands of the applicant company and the river Thames, to and into the premises of the Noxon Company Limited, and operated by the Canadian Pacific Railway Company and to operate its trains over the same.

"And it is further ordered that the portion of the proposed siding owned by the Canadian Pacific Railway Company leading to the Noxon Company's buildings, be operated and maintained jointly by the two companies, as may be mutually agreed between them. In the event of their failure to agree, the question of the joint user and maintenance to be settled by the Board."

The foregoing order was the result of an application made by the Grand Trunk Railway, dated July 27, 1909.

With the application the railway had filed a plan of the proposed branch and spur, a notice of sale to the railway of the private property necessary to be acquired, and the consent of the Noxon Company. The letter of consent reads as follows:—

"INGERSOLL, ONT., July 9, 1909.

"The Grand Trunk Railway System,
Toronto, Ont.

"DEAR SIRs,—We have received blue print plan 9667, dated Toronto, July 4, 1909, showing red thereon the tracks which you propose to build to connect with our two tracks shown in white on same blue print, marked

"Noxon Company's siding." The two latter tracks are owned absolutely by the Noxon Manufacturing Company, Limited, and we have no objection to your company crossing and connecting with our two tracks as shown on the above-mentioned plan, nor have we any objection to you operating over those tracks to serve us and other industries.

"Yours truly,

"THE NOXON COMPANY, LIMITED,

"Sgd. C. W. RILEY, *President*.

"WM. WATTERWORTH, *Vice-President*."

That the Noxon Company was deeply interested in getting the Grand Trunk connection provided for by the order of November 3, 1909, is further shown by letters from that company appearing on the Board's file No. 11153. On October 8, 1909, C. W. Johnston, Manager of the Noxon Company, wrote the Secretary of the Board as follows:—

"We are considerably inconvenienced as about 10 cars of pig-iron and about forty cars of lumber, besides several other carloads of raw material, are held up pending the completion of the siding, so we cannot really go on with our work until the siding is completed. We are at the present time doing a lot of teaming, which would not be necessary if the siding were finished."

On November 3, Mr. Johnston wrote again:—

"The case is greatly aggravated by the continued delay. May we not have your prompt consideration of the application?"

On November 9, Mr. Johnston again wrote the Board:—

"We now note that the railway companies have received the necessary order from the Board in reference to the siding into our works. We also note that they are to mutually agree upon the use of the siding, which we trust will not take very long as we are very anxious indeed that the work should be completed."

The Noxon plant, manufacturing agricultural machinery and implements, was contiguous to the Canadian Pacific Railway line south of the Thames and was served by two switches from that line. Obviously the company believed that it was to its material advantage to secure direct connection with the Grand Trunk system as well. These two connections gave the Noxon Company, in practice, the privileges which are expressed in section 313 of the Railway Act, regarding interswitching, which reads as follows:—

"313. (1) Where a branch line of one railway joins or connects the line or lines of such railway with another, the Board may, upon application of one of the companies, or of a municipal corporation or other public body, order that the railway company which constructed such branch line shall afford all reasonable and proper facilities for the interchange, by means of such branch, of freight and live stock traffic, and the empty cars incidental thereto, between the lines of the said railway and those of the railway with which the said branch is so joined or connected, in both directions, and also between the lines of the said first mentioned railway and those of other railways connecting with the lines of the first mentioned railway, and all tracks and sidings used by such first mentioned railway, for the purpose of loading and unloading cars, and owned or controlled by, or connecting with the lines of the company owning or controlling the first mentioned railway, and such other tracks and sidings as the Board from time to time directs; and the company owning or controlling the secondly mentioned railway shall furnish similar reasonable and proper facilities to the first mentioned railway

and to other lines connecting with its own railway, and shall in all respects be under duties corresponding to those of the company owning or controlling the first mentioned railway, and shall be subject in like manner to the directions of the Board.

"(2) The Board may, in and by such order, or by other orders, from time to time determine as questions of fact, and direct the price per car which shall be charged by and for such traffic."

It would appear that the advantages of access to both railways enjoyed by the Noxon Company, as a result of the Order of November 3, 1909, were so obvious that an application was made to the Board by the citizens, merchants and manufacturers of the town of Ingersoll for an order requiring the Grand Trunk Railway Company and the Canadian Pacific Railway Company to provide interchange or transfer tracks in and for the other industries of the town of Ingersoll. This application was followed by an order dated August 1, 1911, by which the Grand Trunk Railway was authorized to construct at its own expense a track as shown on a plan dated April 26, 1911:—

"For the purpose of interchanging traffic between the railway and that of the Canadian Pacific Railway Company at Ingersoll, the work to be completed on or before the 19th day of October, 1911."

The piece of track was constructed some time in 1912.

On March 8, 1919, the then mayor of Ingersoll, (J. Buchanan) wrote the board stating that the interswitching order of April 26, 1911:—

"Only served the north side of the river where two plants are located, namely the John Morrow Company and the Ingersoll Packing Company, while other factories such as the Wm. Stone Company, Fertilizer Manufacturers; the Ingersoll Machine Company, Borden Milk Company, Wood Milling Company, The Wenlaw Coal and Lumber Company, and the Scott and Daniels mill and coal dealers, etc., get no benefit whatever from the interswitching arrangement on the north side of the river. . . . We have on the property known as the Noxon Company, which is on the south side of the river, perfect interswitching between the Grand Trunk and the Canadian Pacific Railway, right on that property. The Ingersoll Council and Board of Trade, and the manufacturers wish to request the Railway Board to give us the privilege of using this interswitching on the Noxon property for town interswitching, so that the manufacturers of the south side of the river may have equal advantages with those on the north side of the river, in so far as interswitching is concerned."

The letter of Mayor Buchanan was followed by a great deal of correspondence. On March 20, 1919, the council of the town of Ingersoll passed the following resolution:—

"That we request the Dominion Railway Board to grant to the Ingersoll manufacturers and other shippers on the south side of the river, the privilege of interswitching on the property known as the Noxon property, where tracks are already laid which are suitable; and that we authorize the mayor and clerk to make application for the same and that we notify the Canadian Pacific and the Grand Trunk railways of the action we are taking in the matter."

On April 22, 1919, the Assistant Chief Engineer of the Board reported that he had inspected the situation at Ingersoll, and submitted a plan. He said:—

"In view, however, of the number of cars to be transferred at the present time, it appears to me that the construction of the interchange track is not necessary. The Grand Trunk railway track marked E-C

on the plan herewith can be used as an interchange track and would properly take care of all the cars to be interchanged for some time to come. . . . I recommend that interchange be ordered at Ingersoll, and that the track marked E-C be used as an interchange track."

On September 9, 1919, G. A. Brown, Chief Clerk of the Traffic Department of the Board, made a careful, detailed report after having visited Ingersoll. In the course of his report he says:—

"On the property which I referred to as being leased to the municipality, the Grand Trunk Railway and the Canadian Pacific Railway both have tracks, and as a matter of fact, an interchange is already constructed thereon. This property is coloured pink on the map. Cars could be interchanged on the property, without the construction of further tracks, and I understand from the Mayor that both the Grand Trunk and Canadian Pacific railways were agreeable to this when the matter was first taken up. Since then, of course, the Canadian Pacific Railway has filed an objection."

Mr. Brown's report concludes:—

"In my opinion the interchange is required, as the present interchange serves only the St. Mary's Division of the Canadian Pacific Railway, and is useless to those shippers having plants on the south side of the river."

From the statements and arguments presented at the hearing, and from documents on the Board's files, it would appear that opposition to the application of the town council was confined to the Canadian Pacific Railway, the John Morrow Screw and Nut Company, owners and occupants of what was formerly the Noxon property, and upon which the tracks of the Canadian National and Canadian Pacific systems to be used in the proposed interswitching operations were actually located and connected; and the National Trust Company, who were the holders of a mortgage on the John Morrow property.

I am unable to see any merit in the contention of the National Trust Company, which, as I understand it from the documents on file, was that the use of the tracks now located on the John Morrow Company's property for interswitching purposes, would prejudice their interest in the property.

I reach this conclusion, having specially in view the reports and recommendations of the Assistant Chief Engineer of the Board and of the Chief Clerk of the Board's Traffic Department. Even if any damage were possibly to result to the property and their security thereby be depreciated, that to my mind, would not be a reason for refusal of the interchange privilege by this Board. If the National Trust Company were found to be entitled to valuable consideration for damage suffered, payment of that damage would have to be provided for. The course of events would be the same as in other like cases, where property damage is suffered because of railway construction. If it were possible to prevent railway construction because of prospective damage to property, there would be fewer railways.

The objection of the John Morrow Company resembles in some degree that of the National Trust, namely, possible damage to property, with the addition of the claim of trespass upon their rights of ownership. Such claims as they may establish of damage or trespass must be dealt with as provided in the Railway Act; but unless the provisions and purpose of that Act are to be ignored, cannot be permitted to prevent railway construction or railway connection. The Act presumes a railway to be a public utility, and adequately provides that private right must make way for public service.

The John Morrow Company is the successor of the Noxon Company in the ownership of the property that would be specially affected by an interswitching order. By their letter of July 9, 1909, the Noxon Company gave formal consent to the operation of the Grand Trunk Railway, of which the Canadian National is the successor, to operate over those tracks to serve, "us and other industries." The Grand Trunk built the branch to the Noxon plant, having to bridge the river Thames in order to do so, on the definite and distinct understanding that they should be permitted to serve not only the Noxon Company, but other industries as well. That being the fact, I respectfully submit that the John Morrow Company cannot successfully repudiate, in 1924, the agreement made by the Noxon Company in 1909.

Further in connection with the opposition of the John Morrow Company to the application of the town of Ingersoll for an interswitching order, there appears on the Board's files copy of an agreement between the parties, dated December 23, 1918, by which the John Morrow Company leases to the town of Ingersoll the lands and premises formerly occupied by the Noxon Company, until the first of February, 1929. The agreement sets out that,—

"the corporation desires to lease the lands, premises and property described for the purpose of promoting the establishment of industries thereon."

The sixth paragraph of the agreement is as follows:—

"The corporation shall have full power and authority to sublet the said blocks "B" and "C" on such terms and conditions as may seem proper, but each sublease made by the corporation shall provide that no business shall be carried on the lands leased which shall be deemed a nuisance to the Ingersoll File Company, Limited, or to any sub-lessee of the said lands, and that no business shall be carried on thereupon which shall increase the insurance on the Ingersoll File Company, Limited, or any other sub-lessee of the Noxon property."

The seventh paragraph provides that the town shall insure the buildings on block "B" of the property to their full insurable value, in the name of the company.

The town pays a yearly rental of \$4,250 for the property and grants full exemption from taxation. The terms of this lease indicate the anxiety of the town for industrial expansion. The facts placed before the Board prove clearly that the lack of interswitching facilities south of the Thames is a serious impediment to that expansion. The objections made by the John Morrow Company to an interswitching order, which is necessary so that the town may get value for the money they are paying and the exemptions they are giving that company, seem to me entirely unwarranted under the circumstances.

It would also seem to me that having placed the property in the hands of the town for its uses until 1929, the John Morrow Company is not now in a position to make valid objection that the use of the existing tracks for interswitching purposes is an infringement on their property rights; or that the laying down of additional tracks in order to facilitate interswitching movements would or could constitute such an infringement, so long as the lease is in force.

The objection taken by the Canadian Pacific Railway would seem to be that they give adequate service to the Ingersoll industries south of the Thames and therefore the order to permit interswitching should not be made. It would appear from the evidence submitted at the hearing, and from the letters and reports on file, that there is sharp and decided difference of opinion on that point between the railway and its customers. All agreed that the service rendered by the Canadian Pacific Railway over its own lines was prompt and

efficient, but that company did not and could not render service over the lines of the competing system; which service the applicants desire to use on terms more favourable than those now available to them. The statements made at the hearing, and appearing on the files of the Board, as to disabilities suffered by shippers located south of the Thames, because of lack of interswitching facilities, were not controverted in the arguments of the railway counsel.

The application made by the town of Ingersoll which resulted in the Board's Order of April 26, 1911, was for general interswitching privileges. These privileges were granted, so far as the industries north of the river Thames were concerned. These were two in number, but only one was affected, because the other already enjoyed connection with both railways. As I understand it, any reasons that can possibly exist for the refusal of interswitching privileges to the industries south of the Thames, must have existed for refusal of these privileges north of the Thames. I am unable to appreciate the principle upon which an interswitching order was made applicable to only that part of the town where the need was least and refused to that part where it was greatest.

I observe that in the letter of the counsel for the Canadian Pacific Railway to the Board, dated December 30, 1924, he says:—

“The report of the hearing at Ottawa on September 14, 1909 (file 11153), at page 10223 shows clearly that it (the Grand Trunk branch to the Noxon plant) was a private industrial spur for this one industry that was in contemplation, and this is confirmed by the fact that the Grand Trunk never acquired the right of way for it.”

It would appear to me that the terms of the letter of consent of the Noxon Company of date July 9, 1909, do not bear out the contention of the railway counsel that “it was a private industrial spur for this one industry.” I also desire to observe that the filing by the Grand Trunk of the acknowledgment of sale of certain lands required for right of way of the then proposed branch by the former owner, James McNab Crotty, does not bear out the contention of the railway counsel that,—

“The Grand Trunk never acquired the right of way for it.”

In his letter to the Board dated December 22, 1924, counsel for the Canadian Pacific says:—

“It is alleged that the Grand Trunk spur is a branch line; but this is untenable.”

In reference to the foregoing I desire to observe that the order of the Board of November 3, 1909, authorized the Grand Trunk to,—

“Construct, maintain and operate the said branch line or siding and a spur therefrom, extending from a point on the applicant company's railway, west of its Ingersoll station, etc.”—

and that I am unable to find either in the application or in the order any words that would express or imply the idea that there was any limitation on the use of the track so authorized as a branch line, except as to the terms of its joint operation with the Canadian Pacific Railway.

On the facts as above set forth I am compelled to conclude that,—

(1) A number of important industries in the town of Ingersoll are at a serious disadvantage in reaching customers because of lack of interswitching facilities;

(2) There are railroad tracks already laid down and suitably located which would permit interswitching as applied for;

(3) The objections urged against the issue of an Order for interswitching do not appear to me to be well founded;

(4) Power has been conferred on this Board for the purpose of enabling it to remedy conditions such as those complained of.

For these reasons I am unable to agree with the judgment of Mr. Commissioner Boycé, concurred in by the Assistant Chief Commissioner that the application of the town of Ingersoll should be dismissed.

I desire further to point out that the conclusion that the application should be dismissed has not yet been reached by a majority of the members of the Board who heard the evidence in the case. The then Chief Commissioner, Hon. F. B. Carvell, who presided on that occasion, is now deceased; Mr. Commissioner Lawrence is now absent from the city and has been absent for some weeks on account of serious illness. Under these circumstances and having in view the importance of the question involved and the important documents and mass of correspondence that has come upon the files of the Board in connection with the case since it was last heard on April 1, 1924, I would respectfully suggest that there be another hearing before a final decision is given.

OTTAWA, June 1, 1925.

Application of Mr. J. C. Hodgson, Chairman, Transportation Committee, Jam Section, Canadian Manufacturers' Association, for an Order of the Board directing the railway companies to establish commodity rates lower than Fifth Class on Canned Goods on basis of 40,000 and 60,000-pound minimum carload weights, from Eastern Canadian points to distributing centres in Manitoba, Saskatchewan, and Alberta.

File 27256.6

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

From British Columbia canning points to distributing centres in Alberta, Saskatchewan, and Manitoba three sets of rates have been established by the railway companies on canned goods, in carloads, which are subject to three minimum weights, viz., 24,000, 40,000 and 60,000 pounds. From eastern Canadian points to the same destinations, there is only one basis in effect, viz., that of the fifth class rates, minimum 24,000 pounds.

The applicants allege that the existence of three sets of rates from British Columbia canning points eastbound, and refusal of the railway companies to establish a similar arrangement from eastern Canadian points westbound, results in unjust discrimination which they ask the Board to order removed. Applicants further allege that the fifth class rates as applying from British Columbia points of origin to prairie destinations are fair and equitable as compared with the fifth class rates from eastern Canadian points to the same destinations. On the submission of the applicants, therefore, their application would be met by directing cancellation of commodity rates, where lower than fifth class, from British Columbia shipping points, making the fifth class basis applicable both eastbound from British Columbia and westbound from eastern Canadian points.

The rates from British Columbia canning points to the distributing centres above referred to are on a competitive basis. The rate which is specially significant is that from Vancouver to Winnipeg. This being on a competitive basis, it, in turn, influences the rate adjustment from other points in British Columbia.

For many years, eastbound rates on specific commodities from points in British Columbia—recognized as Pacific coast terminals—to certain points in Western Canada as well as to destinations in Eastern Canada have borne a relationship to the rates on like commodities from the corresponding terminals in the state of Washington. The result is that rates from British Columbia points have thus been held down to a basis lower than what is provided for under the regular scale of the Canadian Freight Classification.

Under these competitive conditions, the rates from Vancouver to Winnipeg are influenced and controlled by the rates published by American lines, such as the Great Northern and Northern Pacific from Seattle to Winnipeg. The Vancouver-Winnipeg rate is a competitive one and the tariff so indicates, the rate being described as a competitive rate. The Seattle-Winnipeg rate on Canned Goods is \$1.42½ per 100 pounds, minimum 40,000 pounds, and \$1.26½, minimum 60,000 pounds. As a result of this and arising out of competitive reasons, there are these two sets of rates and minima applying from Vancouver to Winnipeg.

The competitive situation thus outlined has further influence in regard to the movement in British Columbia. The Winnipeg rates operate as a maximum carrying the rate of \$1.26½, with minimum 60,000 pounds, back to Regina and Saskatoon. The Vancouver-Winnipeg rate also applies as a maximum on Mission and Haney, shipping points on the main line of the Canadian Pacific directly intermediate to Vancouver, at distances of 41 and 26 miles respectively.

From Vancouver to Calgary, the regular fifth-class rate applies, regardless of the carload minimum weight; and the Calgary rate is also published to Edmonton. Rates to other points between Calgary and the destination territory to which the Vancouver-Winnipeg rates apply as maxima are keyed in with relation to the differences between the Calgary and Winnipeg rates.

The rate adjustment from Vancouver, created under the conditions above described, necessitated a similar arrangement of different sets of rates and minima to the same destination territory from interior British Columbia points, in order to put the canners there on a basis relative to the Coast canners. Therefore, from Nelson, Brilliant, Vernon, Kelowna, Penticton and Kamloops to Winnipeg, the 24,000 pounds minimum carries the fifth-class Pacific distributing rates. The rates established for the 40,000 and 60,000 pounds cars are based on the same percentage of the fifth-class Pacific distributing rates as the commodity rates from Vancouver to the same destinations bear to the fifth class terminal rates. To Regina, the rates are established on the same basis, and to Saskatoon the Regina rates are applied. From Oliver, the rates are uniformly based on 2 cents per 100 pounds over Penticton.

From the interior British Columbia points to Calgary, the fifth-class Pacific distributing rates apply, and this is also the basis of rates to Edmonton for cars of 24,000 pounds minimum. The rates to Edmonton for the 40,000 pounds and 60,000 pounds, minimum, are, in the case of Kamloops, the Calgary rate, and from the other representative interior shipping points they are based on the same difference under the fifth class distributing rate as in the case of Kamloops.

The situation throughout, then, from British Columbia points eastbound, involved in the present application is a competitive one arising out of conditions developed in connection with competing American lines, and this situation reacts not only on the Vancouver to Winnipeg movement but also on the rate adjustments from interior and intermediate points.

From Ontario points, the fifth-class rate, with minimum of 24,000 pounds, is the basis in effect. While the competitive situation affecting the eastbound rate does not apply in connection with the westbound rate from Ontario points, there is also a factor of competition here which reacts to the advantage of the Ontario shipping point and has a bearing upon the rate on which it can get into western territory. This is referred to later.

Mr. Hodgson, for the applicants, contended that there should be from Ontario points westward a commodity rate lower than fifth class for carloads of 40,000 pounds, and a still lower commodity rate on carloads of 60,000 pounds. In contending, in substance, that the same arrangements should apply westbound into the Prairie Provinces as apply eastbound to said provinces, the applicant left out of consideration the competitive conditions already described, which have an important bearing upon the rate adjustment from Vancouver.

The situation in connection with the Winnipeg competition requires some analysis. From Vancouver to Winnipeg, a distance of 1,465 miles, the rates are \$1.42½ for a 40,000 pounds minimum, and \$1.26½ for a 60,000 pounds minimum. Taking Aylmer, Ont., as a characteristic point, the distance to Winnipeg is 1,317 miles, with a rate of \$1.14 and a minimum of 24,000 pounds. This rate governs for any weight in excess of the minimum. This, however, is an all-rail rate. The lake-and-rail rate applicable during the season of navigation is \$1.08. In addition, there is the all-water rate applicable to shipments from certain eastern Canadian points, said rate being \$1.04.

It was stated in evidence that a very large percentage of the traffic moves under these lower all-water and lake-and-rail rates. Mr. Ransom made the statement that of the total tonnage to Winnipeg in 1922, 70 per cent moved lake and rail. This was not controverted in the evidence submitted.

So far as the all-water rate to Winnipeg is concerned, it is as low as or lower than the rates applying from representative points in British Columbia to Winnipeg under the various minima, with the exception of Nelson and Brilliant, which are respectively 98 cents and \$1. For purposes of comparison, the following British Columbia points have been taken as representative: Vancouver, Nelson, Brilliant, Vernon, Kelowna, Oliver, Penticton, Mission, Haney and Kamloops.

In the case of the lake-and-rail rate of \$1.08 to Winnipeg, six of the points in question have, under the 60,000 pounds minimum, lower rates from British Columbia to Winnipeg than from Aylmer to Winnipeg. These points are Nelson, 98 cents; Brilliant, \$1; Vernon, Kelowna and Kamloops, \$1.04; and Penticton, \$1.06. It appears, then, that in meeting British Columbia shipments at the point where they presumably have the longest mileage, namely, Winnipeg, the Ontario shippers have the advantage to that point of water competition holding down their rates.

The special subject matter of the application relates to the 40,000 and 60,000 pounds minima on which it is understood that the bulk of the shipments from British Columbia points move. There is also provision for 24,000 pounds minimum to the various destinations. In order to compare the eastern and western movements, Winnipeg may be taken as a common point. The distance from Vancouver to Winnipeg is 1,465 miles, while from Aylmer, Ont., to Winnipeg is 1,317 miles.

The Board has no evidence showing the respective volumes of traffic moving to Winnipeg from the West and from the East on the 24,000 pounds minimum. It must also take into consideration differences in mileage. Equally, there must be borne in mind as affecting the situation differences in rate scales, reflecting to some degree differences in conditions as to water competition. Subject to these exceptions, it may be pointed out that when the rates applicable are reduced to ton-mile rates, the rate from Aylmer, Ont., to Winnipeg, on the 24,000 pounds minimum, is 74 per cent of the ton-mile rate from Vancouver to Winnipeg on the same minimum.

The applicant sets out that at points such as Calgary and Edmonton the most severe competition was met. The comparative mileage should be borne in mind in this connection. While the hauls from the various British Columbia points to Calgary and Edmonton vary from 391 miles to a maximum of 810 miles, the distances in the case of movements from Eastern Canada were from 2,100 to 2,200 miles.

The statements made regarding the alleged effect on the Ontario shippers through British Columbia canners cutting into their business were very general. In allegations that business is affected through one section cutting into the business of another, it is important that definite information as to the nature of the change and the extent of the detriment alleged should be furnished.

Here, there was not submitted detail evidence enabling one to balance the eastbound movement from British Columbia points against the westbound movement from Ontario points.

In so far as there is evidence available, it goes to show that, notwithstanding the complaint made in regard to the existing rate situation, a very considerable volume of traffic of the nature involved moves from Ontario points to the territory west of the Great Lakes. Subsequent to the hearing, Mr. De Pass, of the Carnation Milk Products Company, filed a statement to the effect that of the last 150,000 cases of their product shipped from Aylmer to points in Canada, 76,000 cases, or 50.7 per cent, were shipped into the territory west of and including Fort William and Port Arthur.

British Columbia points of origin have the advantage of geographical proximity to the consuming point. On longer hauls, the ton-mile rates, as a result of the tapering of the rates, are normally on a lower basis, and to the ton-mile rates of the shorter British Columbia hauls are higher than those of the longer haul from Ontario points to the same destinations. The ton-mile rates of the longer hauls from Ontario points are affected not only by the tapering of the rates but also by the difference in scale.

Bearing in mind the limitations which apply to making conclusions from ton-mile rates, at the same time some comparisons are instructive as showing how the rate charged, measured in terms of the ton-mile unit, works out.

Aylmer, Ont., is taken as a typical originating point. From Aylmer to Calgary is a distance of 2,140 miles; to Edmonton, 2,110; to Regina, 1,673; to Saskatoon, 1,787; and to Winnipeg, 1,317.

Calgary. The ton-mile rate from Aylmer to Calgary is 54 per cent of the average ton-mile rate from representative British Columbia points, as already indicated, to that destination. These representative British Columbia points have mileages varying from 391 to 641. To Edmonton, the Aylmer ton-mile rate averages 64 per cent of the British Columbia ton-mile rates as above defined. The distances from representative British Columbia points vary from 519 to 810 miles. To Regina, the percentage is 69 per cent. The British Columbia distances vary from 734 to 1108. To Saskatoon, it is 75 per cent. The distances from British Columbia points vary from 832 to 1119. To Winnipeg, the percentage is 84 per cent. The distances from British Columbia points vary from 1091 to 1465.

The revisions suggested on behalf of the applicant were on the average of the 40,000 and 60,000 pounds minimum. In the case of Calgary, it would change the percentage from 54 per cent to 37 per cent; in the case of Edmonton, it would change the percentage from 64 per cent to 44 per cent; in the case of Regina, the change would be from 69 per cent to 52 per cent; to Saskatoon, the change would be from 75 per cent to 56 per cent; and to Winnipeg, it would be a change from 84 per cent to 63 per cent.

While it is not suggested that the ton-mile rate is under every and all circumstances a conclusive test, the percentages above given are at least significant as showing the reduction in the ratios between the ton-mile rates from Ontario points and the ton-mile rates from British Columbia points which would be brought about by the change suggested.

In the submission filed, Emo, Ont., was referred to as having an advantage over the eastern canners. It is to be noted that while Emo is in the province of Ontario, it is on the Fort William sub-division of the Canadian National Railways, 188 miles east of Winnipeg, and is in the territory subject to the prairie scale. In this territory, town or distributing tariffs on the basis of 85 per cent of the standard tariffs are published. Emo, apparently, is not a general distributing point, but is a distributing point in so far at least as the commodity herein is concerned. In connection with town tariffs, there are other points in the West which, instead of having the town tariff generally, have it for a specified commodity or commodities.

The rate which is published from Emo to distributing centres in the prairie provinces is the fifth class distributing rate, with, however, a single minimum of 40,000 pounds. Shipments from eastern Ontario points have a fifth-class rate very appreciably lower than the standard mileage. Emo being a point in territory covered by the prairie scale and being given a rate which is on the general tariff basis, it does not appear that this treatment discriminates against points in Eastern Ontario.

The summary form:—

(1) The arrangement whereby the two sets of minima apply from British Columbia points to Winnipeg is brought about by competitive conditions.

(2) These competitive conditions have a bearing upon the interior and intermediate points.

(3) While these competitive conditions do not apply westward from Aylmer, this point and other Ontario points, has the advantage of water competition which is not open to the movement from British Columbia points.

(4) The special competition complained of by eastern shippers is on the longer mileages. It is not shown that the difference in treatment, bearing in mind the circumstances which have brought about the existing conditions, amounts to unjust discrimination or undue preference in regard to the longer mileages from the east.

(5) The allegations that the existing rate structure has subjected eastern shippers to a detriment by permitting the British Columbia shippers to cut into the business was not established.

A case for such action as asked for has not been made out.

June 11, 1925.

Chief Commissioner McKeown and Commissioner Boyce concurred.

Application of the Council of the Corporation of Brighton, Ont., for inter-switching facilities between the Canadian Pacific Railway and the Canadian National Railways at Brighton, Ont.

File 6713.66

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

This matter was the subject of an interim report of the Board's Traffic Department, and was thereafter set down for hearing.

The Canadian Pacific Railway Company, in the first instance, stated that it was agreeable to the request for interchange, and said it was willing to participate in the cost on the basis of it being equally divided between the Canadian National Railways and the Canadian Pacific Railway Company.

In the report made by the Board's Traffic Department, which favoured the installation, the work was estimated to cost \$7,000; and it was recommended that the town of Brighton contribute \$500; the balance to be divided between the Canadian Pacific Railway Company and the Canadian National Railways on the basis of two-thirds being paid by the former railway and one-third by the latter railway.

The Canadian National Railways, in written submission and in presentation at the hearing, took the position that a case had not been made out for the establishment of an interchange. It further contended that if the Board took the position that the interchange was justifiable, there should not be any portion of the charge against the Canadian National Railways, it being alleged that it was of no traffic advantage but in reality a traffic detriment.

The Canadian Pacific Railway Company, in written submission, stated that it was agreeable to the basis of contribution recommended in the interim report of the Board's Traffic Officer.

In a letter from the Corporation of Brighton, which is on file and signed by the Clerk of the Corporation, it is stated:—

“In answer to your letter dated November 6, *re* File 6713.66, Application of Town of Brighton *re* interswitching facilities C.P.R. and C.N.R., would say that the same was brought before the council and the arrangement as laid out by Assistant Chief Traffic Officer Brown whereby the town pays \$500 as their share of the work, is quite agreeable with the council the levy made for the corporation and the wish is that the matter be brought before the Board as early as possible so that if the proposition is passed that the work can be started, as the need of the interswitching for the different parties interested is very much needed.”

What was submitted in evidence as to the necessity for the work followed the tenor of what was contained in written submissions. The position taken by the Canadian National Railways in the hearing re-emphasized what it had said in its written submissions.

Direction was given at the hearing that plans were to be prepared, and that the Canadian National Railways would have an opportunity of checking up the plans. The outcome of this is set out in the report of the Board's Chief Engineer which is now before it and which reads as follows:—

“Some time ago, I went to Brighton in connection with this matter and met Mr. McMillan, Superintendent of the C.N.R., and Mr. Main, Superintendent of the C.P.R., on the ground.

“At that meeting, the C.P.R. submitted a plan showing the interchange tracks between the two lines and just east of the C.N.R. Brighton station. It was stated that these tracks on this location would cost about \$6,500.

“Mr. McMillan stated that he preferred to have the tracks located at the east end of the south passing siding, but at that time gave no reason for this location. Since that time, I have discussed the matter with Mr. Bond, General Superintendent, and Mr. McMillan in my office. They submitted a plan showing the proposed tracks just east of Prince Edward street along with an estimate of the cost, which amounted to \$5,307. They estimate the C.P.R. proposition at \$5,643.

“At the time of my inspection, Mr. Main objected to the proposed location east of Prince Edward street on account of the cost, as it appeared that a large depression would have to be filled in. A survey of the ground shows that the tracks will run along the edge of this depression, so that the filling will not be heavy. The C.N.R. estimate shows that its proposition will cost less than the C.P.R. estimate of its own proposition.

“Mr. McMillan stated when here that as the most of the cars received from the interchange would be eastbound, it was desired to have the tracks at the east end of the south passing siding, as in this location the interchange can be operated most economically, with the least interference to trains on the main tracks. I think this is so; and as the tracks are to the advantage of the C.P.R. and to the disadvantage of the C.N.R., I am of opinion that the latter should have what advantage there is in operation.

“I, therefore, recommend that the tracks be located as shown on the C.N.R. plan and profile dated 20th May, 1925.

"Mr. Bond stated that his company would build the tracks for the amount shown in his estimate; that is \$5,307. I enclose herewith an extra copy of the plans and estimates, in case it is desired to take the matter up with the C.P.R."

I am of opinion that order for the installation of the interchange, in accordance with the plan recommended by the Board's Chief Engineer, should go. As pointed out, the town of Brighton is consenting to making a contribution of \$500 towards the cost of the work. I am of opinion that the balance of the cost should be divided 20 per cent on the Canadian National Railways and 80 per cent on the Canadian Pacific Railway.

June 23, 1925.

Chief Commissioner McKeown concurred.

Application of the Canadian Lumbermen's Association for a ruling of the Board in the matter of charge for extra haul out of the direct run on lumber shipped from Pembroke, Ont., to Ottawa for working and reshipment to Toronto and points west thereof, via C.N. Railways.

File 26615.79

REPORT OF CHIEF TRAFFIC OFFICER

This Report is issuing as the

RULING

of the Board in this matter.

The question here at issue relates to the propriety of assessing a charge for extra haul out of the direct run with respect to lumber shipped from Pembroke to Ottawa for dressing, etc., and reshipment to points Toronto and west thereof, which is handled via Canadian National Railways. The written submissions of both applicant and the railway company have been filed with the Board.

The regulations governing stop off and reshipping on lumber, carloads, for dressing, etc., are contained in Canadian National Railways Tariff C.R.C. No. E-697. The tariff stipulates that,—

"Shipments of rough lumber, carloads, for dressing, resawing, kiln-drying or sorting and reshipment, within six (6) months after arrival at stop-off point, may be given the benefit of through rate, from original shipping point to final destination, plus one (1) cent per 100 pounds, minimum \$5 per car for stop-off (provided stop-off point is on the direct run, see rule C) under the conditions shown herein."

Rule C which is referred to provides:—

"C. If stop-off point is not in the direct run, a charge of 1 cent per ton per mile (minimum 20 miles) for haul out of direct run will be made in addition to stop-off charge, except that such charge will not be made between Sudbury Junction and Sudbury, Ont., on lumber for dressing at Sudbury, Ont., and reshipment to points south of Sudbury Junction, Ont. Short line mileage to govern on competitive traffic."

With respect to traffic originating on the Canadian National Railways at Pembroke and destined to Toronto, there are three available routes: (1) via Golden Lake and Scotia Junction; (2) via National Junction and Ottawa; and (3) via National Junction and Rideau Junction; the mileages via those routes being 301.7, 337.2, and 322.4, respectively.

Applicant sets out that traffic from Pembroke to Toronto or points west is handled by the Canadian National Railways via Ottawa; that the railway company contends that, as the short mileage is via Golden Lake and Scotia Junction, when the traffic is consigned for dressing, etc., at Ottawa and reshipment, they are entitled to a charge for extra haul out of the direct run based on the difference between the mileage from Pembroke to Toronto via Golden Lake and Scotia Junction as against the mileage via National Junction and Ottawa. Applicant contends that as the railway company undertakes to move this traffic through Ottawa for reasons of economy or service or both, by so doing they establish the movement via Ottawa as the natural route for this traffic, and consequently are not entitled to make a charge for extra haul out of the direct run.

Counsel for the railway company states that the rates and distances from each individual station must be dealt with specifically; that the rate on lumber from Pembroke to Toronto is based on a constructive mileage scale which is via Scotia Junction. He further states that if the shippers were prepared to pay on the basis of the actual mileage via Ottawa they might have some argument against the assessment of an out of line haul charge. In the issue that is here presented I do not see that there is any relationship between the rate itself, which is not in question, and the charge for a haul out of the direct run. However, the foregoing statement of counsel for the railway company is particularly interesting for the reason that the specific lumber rates to which he refers are built up on a mileage scale, and under this mileage scale the same rate applies for distances over 300 but not over 350 miles. It will be noted, therefore, that regardless of the mileages via the three routes, varying from 301.7 to 337.2, they would all take the same rate under the mileage scale on which the tariff is constructed. Consequently, as the rate constructed on the mileage through Ottawa would be the same as through Scotia Junction, in the terms of the railway company's submission it appears that it agrees that the shippers have an argument against the assessment of a charge for out of line haul.

However, in my opinion the proper determination of the issue here presented really lies in the answer to the question, why is a charge for haul out of direct run justified and authorized? When the traffic is stopped off at a point on the direct run and reshipped within six months it is entitled, under the terms of the tariff as already quoted herein, to the through rate plus 1 cent per 100 pounds, minimum \$5 per car, for stop off. If, however, the stop-off point is not on the direct run, obviously additional service is involved over and above what is required of the railway company when the stop-off point is on the direct run, consequently it has been held that this additional service justifies some extra charge therefor over and above the through rate and the stop-off charge, and which is authorized by the tariff provision already quoted.

It will be further noted that the charge of 1 cent per ton per mile (minimum 20 miles) for haul out of direct run applies "*if stop-off point is not on the direct run.*" It is stated that although the mileage via Scotia Junction is shorter the traffic here involved is moved through Ottawa for the convenience of the railway company and in the interest of being able to give better service to the traffic. Whatever the reason, if the traffic is handled through Ottawa, how can it be held that Ottawa is not "on the direct run," and how can a charge which is justified and authorized for an additional service be with propriety assessed when no additional service, either in accord with the spirit or the wording of the tariff provision, as I see it, is performed?

The Interstate Commerce Commission apparently considered and dealt with a similar issue to what is here involved, and in the case of *Rea-Patterson Milling Company v. M.K. & T. Ry. Co.*, Unrep. Op. A-653, stated:—

"Where the back haul from Coffeyville to Parsons was an additional service performed by the carrier for his own convenience, a charge exacted for such service was unreasonable."

In my opinion, a charge for haul out of direct run in this case is not shown to be justified or authorized by the railway company.

Respectfully submitted,

W. E. CAMPBELL,

Chief Traffic Officer.

OTTAWA, June 23, 1925.

Application of the Parish of Ste. Brigide d'Iberville, the Parish of Ste. Angele de Monnoir, the Town of Marieville, the Parish of Ste. Marie de Monnoir, the Village of Richelieu, the Parish of Notre Dame de Bonsecours, the Village of Chambly Canton, the Village of Chambly Basin and the Parish of St. Joseph de Chambly, re train service between Farnham and Montreal via Marieville, Que., Canadian National Railways.

File No. 26918

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner:*

Early in March, 1925, the attention of the Board was called by Mr. Morin, M.P., to the fact that the Canadian National Railways proposed to re-route the Montreal-Waterloo trains over the line of railway between St. Johns and Farnham, Que., from which the service had been withdrawn in November, 1923, and later he submitted to the Board his reasons against the proposal, pointing out that the municipalities along the line strongly protested against the change being made, and asking for an opportunity to be heard before the application was disposed of.

On April 25 the company advised that the proposed change had been thoroughly discussed with the interested parties, and a copy of a letter addressed to Messrs. J. A. Archambault, M.P., A. J. Benoit, M.P., and L. S. Rene Morin, M.P., who represent the different localities affected, was filed with the Board for its information, in which the company says in part:—

"At the present time there are eight electric passenger trains, each way per day, between St. Lambert and Marieville, and also two steam trains, involving joint operation and the delays and embarrassment that inevitably follow. This frequency of service on single track line also renders it quite impossible to make as fast time with steam trains as is easily possible on the double track between St. Johns and St. Lambert, and on the comparatively light traffic section between Farnham and St. Johns.

"Careful analysis of the traffic has shown:—

- "(1) That there is very little passenger traffic locally, between Marieville and Farnham.
- "(2) That on the joint section between Marieville and St. Lambert the electric cars are carrying over 85 per cent of the entire passenger traffic, showing clearly that the great

majority of people in these communities patronize the electric service, for various reasons, including that of lower fares.

"In view of all these conditions, it is proposed, effective May 3, to re-route Montreal-Granby-Waterloo steam passenger trains via St. Johns and allow the Montreal and Southern Counties Railway to provide the entire train service between St. Lambert and Marieville. In this connection it is intended to improve the electric service in every reasonable way with a view to giving satisfaction to the people living along these lines, and said measures will include improvements in postal service, roadbed, equipment and schedules, the latter being largely made possible by the withdrawal of steam trains and simplification resulting from single track control of the line. Concurrently a freight service by electric traction will be inaugurated between Granby and Montreal and intermediate points, which we believe will provide the utmost facility for shippers.

"While it is felt that the amount of traffic between Farnham and Marieville does not warrant the continuance of train service between these points, we will undertake to have the Frelighsburg train continue through Farnham to Marieville in the morning, where it will make close connection for Montreal in order, particularly, to take care of milk shipments for Ste. Angele, and then return immediately to Farnham, and we will guarantee to give this service for approximately one year from the present date at least.

"As an alternative, if it is mutually agreed to, we will undertake to electrify the line from Marieville to Ste. Angele, during the present summer, and thereafter provide electric service between these points, withdrawing all service between Ste. Angele and Farnham."

Applications and complaints were received from the parish of Ste. Brigide d'Iberville, the parish of Ste. Angele de Monnoir, the town of Marieville, the parish of Ste. Marie de Monnoir, the village of Richelieu, the parish of Notre Dame de Bonsecours, the village of Chambly Canton, the village of Chambly Basin, the parish of St. Joseph Chambly, and the case was heard at a sitting of the Board held in Montreal on May 12 last, at which Mr. Archambault, M.P., Mr. Bovin, M.P., and Mr. Morin, M.P., appeared for the applicants, and urged that the electric cars in use are inconvenient inasmuch as the seats are narrow and short, the heating system is defective, and the roadway is in such condition that riding is uncomfortable and dangerous for persons in ill health, who on emergency may have to use the line en route to the hospital at Montreal for operation or treatment; also that the handling of baggage from the McGill Street terminal to the Bonaventure station causes inconvenience and additional expense to the commercial travellers; and that disorganization of the mail service is consequent upon the removal of the railway post office which has been in operation on the steam trains.

In addition to the above reasons, Mr. Morin, M.P., questioned the economy of rebuilding the line from Farnham to St. Johns. He pointed out that between Marieville and St. Lambert the railway line is in poor condition, and contended that it would be advantageous to the company to leave the service as it was and not cause the disturbance to the traffic which is necessarily involved in the suggested change.

On the other hand, the railway company represented that the operation of the joint service, electric and steam, between Marieville and St. Lambert is unsatisfactory, that the steam trains were delayed by the electric operation, and that the traffic handled by the steam trains did not justify their continuance over that route, the preponderance of travel being by the electric trains,

no doubt due largely to the difference in fares in favour of the electric line, the same being,—

Steam Trains—

Marieville to Montreal, 90 cents

Electric Trains—

Marieville to Montreal, 85 cents

Commutation: ten, \$5; fifty, \$10,

with similar differences from other points. And in connection with the freight traffic to and from Granby, Waterloo, and other points through the Rouses Point gateway, it was pointed out that by opening the Farnham-St. Johns line considerable saving in ton mileage can be made, St. Johns being 20.84 miles nearer Rouses Point than St. Lambert, which would greatly offset the slight increase in mileage between Montreal and Waterloo via St. Johns as against via St. Lambert and Marieville; and that the necessary repairs to the line for the operation of the electric trains could be more cheaply made than if it had to be brought up to a standard sufficient to continue carrying the steam trains in addition. In connection with the re-routing of the Waterloo-Montreal passenger trains via St. Johns, it was claimed that a reduction in train service from Rouses Point to Montreal could be made, effecting considerable saving in money, without detriment to the service. And as to the difficulty in handling baggage from the McGill Street terminal to the Bonaventure station, arrangements have been made to provide transfer service without additional cost to the passenger.

The track mileage Waterloo to Montreal via Marieville is 66.96 miles; Waterloo to Montreal via St. Johns is 69.32 miles; Rouses Point to Montreal is 50 miles; Farnham to Marieville is 13.40 miles; and Ste. Angele to Marieville is 3.70 miles. It was shown that the passenger train miles, Waterloo to Montreal via Marieville, total 267.84 miles per day; and Waterloo to Montreal via St. Johns, 277.28 miles per day, an increase in train miles of 9.44 miles per day; and passenger train miles Rouses Point to Montreal, 100 miles per day. The company's time-table, effective May 3, shows a mixed train Farnham to Marieville, and Marieville to Farnham, and in addition, by direction of the Board, a trip during the afternoon Marieville to Farnham has been made, which involves running the train from Farnham to Marieville to furnish the equipment for the train so directed, making a total of 53.60 miles per day between Marieville and Farnham. The company's proposal is to take off the Rouses Point-Montreal and the Farnham-Marieville trains referred to, totalling 153.60 miles per day, thereby effecting a net saving in train mileage of 144.16 steam train miles.

In carrying out the train service programme, the electric train service Marieville to Montreal was increased by one train per day, making 24.76 miles. If the train mileage of electric and steam trains were considered equal, this reduces the net saving to 119.40 miles per day.

As to the complaint made concerning the conditions of travel by the electric line, it may be said that the trains make the trip from Marieville to Montreal in from one hour and a quarter to one hour and twenty-seven minutes. Inspections made by the Board's Operating Department show that the passenger cars on this line, in comparison with other electric lines, are equipped thus:—

	Niagara, St. Catharines and Toronto Railway	London and Port Stanley Railway	Montreal and Southern Counties Railway
Length of seat cushion.....	33"	34 to 38"	31½"
Width of seat cushion.....	16"	18"	16"
Length between ends of seats (aisle way)...	23½"	24 to 26"	17½ to 21½"
Lavatories.....	None	Two with wash basins	21 cars; hoppers, no basins.
Width between double seats.....	13"	12½"	12"
Width between front of cushion to back of seat.....	13"	12½"	11½"
Seating capacity body of car.....	51	48	38
Smoking end.....	12	20	22
Closed or open end seats.....	Open.....	Closed frame.....	Open
Style of heater.....	Stove, electric fan...	Stove and fan.....	Stove and fan and electric heater.
Sashes.....	Single.....	Single.....	Single and storm.

There is no way by which passengers can move from one car to another. There is an attendant in each car who gives necessary attention to passengers, collects fares, etc.; the car seats are upholstered in leather, and the cars are clean.

The track is laid with light rails, which are short, and the noise caused by the movement of the train over these rails, without doubt, causes much annoyance. It has been inspected by the Board's Assistant Chief Engineer, who reports it well tied and ballasted, and safe for traffic. The rails, although light, are in good order, and improvements are being made in the surface of the line.

It is quite apparent that the preponderance of travel has been by the electric trains, and the light ticket sales for the steam lines show that very few people, in comparison, have made use of them.

As to the question of continuing the service Marquetteville to Farnham, the company offered to electrify the line Marquetteville to Ste. Angele and to give that station the service of the electric line, there being considerable milk traffic together with some passenger and freight traffic to be taken care of at that point.

From Ste. Angele to Farnham the line is 9.70 miles in length, and throughout that distance there is but one station, Ste. Brigid. The village of St. Brigid, which is served by the station of the same name, is between two and three miles from the railway and at about an equal distance from the Canadian Pacific Railway station of that name, by which line adequate service is given, and to reach which no greater distance must be travelled.

In view of the above considerations, and especially of the saving involved, I think it is right to give effect to the company's proposal to withdraw the steam trains from the electric line, Marquetteville to Montreal, and re-route them via St. Johns; as well as to abandon the line between Farnham and Marquetteville with the exception of that portion between Ste. Angele to Marquetteville, which should be electrified, and the electric service extended to and include that station. In the meantime, I think the company might withdraw the mixed train now running from Marquetteville to Farnham during the afternoon which was put on by direction of the Board.

OTTAWA, June 27, 1925.

The Assistant Chief Commissioner and Commissioner Boyce concurred.

ORDER No. 36550

In the matter of the application of the Parishes of Ste. Brigide d'Iberville, Ste. Angele de Monnoir, Ste. Marie de Monnoir, Notre Dame de Bonsecours, and St. Joseph de Chambly, the town of Marieville, the Village of Richelieu, the Village of Chambly Canton, and the Village of Chambly Bassin regarding the train service between Farnham and Montreal, via Marieville, Quebec, on the Canadian National Railways.

File No. 26918

TUESDAY, the 30th day of June, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, May 12, 1925, the applicants and the railway company being represented at the hearing, and what was alleged,—

The Board orders: That the Canadian National Railway Company be, and it is hereby, permitted to withdraw its steam trains from the electric line, Marieville to Montreal, and re-route them via St. Johns; and to abandon the line between Farnham and Marieville, with the exception of that portion between Ste. Angele and Marieville, which shall be electrified and the electric service extended to include the said station of Marieville; the mixed train now running from Marieville to Farnham in the afternoon to be withdrawn.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36510

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Suffield-Blackie Branch from mileage 84 to 124.65.

File No. 21984.9

MONDAY, the 22nd day of June, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Suffield-Blackie Branch from mileage 84 to 124.65; provided the speed of trains operated over such line be limited to a rate not exceeding fifteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36542

In the matter of the application of the Ottawa Electric Railway Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff C.R.C. No. 12, on file with the Board under Case No. 2987.

FRIDAY, the 26th day of June, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Passenger Tariff C.R.C. No. 12, on file with the Board under Case No. 2987, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 418

In the matter of the application of the Bell Telephone Company of Canada, hereinafter called the "Applicant Company," under Section 375 of the Railway Act, 1919, for approval of Exchange and Toll Line form of agreement No. 650B, on file with the Board under Case No. 538.

FRIDAY, the 26th day of June, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the consents of the Ontario Railway and Municipal Board, and the Public Service Commission of the province of Quebec, filed; and upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders:

1. That the said Exchange and Toll Line form of Agreement No. 650B, to be entered into between the applicant company and any other company, municipality, or corporation having authority to construct or operate a telephone system or line, on file with the Board under case No. 538, be, and it is hereby, approved.

2. That General Orders Nos. 114, 375, and 409, dated respectively November 12, 1913, March 17, 1923, and November 5, 1924, made herein, be rescinded.

H. A. McKEOWN,
Chief Commissioner.

1871-1872. The first year of the new century. The first year of the new century. The first year of the new century.

1873-1874. The second year of the new century. The second year of the new century. The second year of the new century.

1875-1876. The third year of the new century. The third year of the new century. The third year of the new century.

1877-1878. The fourth year of the new century. The fourth year of the new century. The fourth year of the new century.

1879-1880. The fifth year of the new century. The fifth year of the new century. The fifth year of the new century.

1881-1882. The sixth year of the new century. The sixth year of the new century. The sixth year of the new century.

1883-1884. The seventh year of the new century. The seventh year of the new century. The seventh year of the new century.

1885-1886. The eighth year of the new century. The eighth year of the new century. The eighth year of the new century.

1887-1888. The ninth year of the new century. The ninth year of the new century. The ninth year of the new century.

1889-1890. The tenth year of the new century. The tenth year of the new century. The tenth year of the new century.

1891-1892. The eleventh year of the new century. The eleventh year of the new century. The eleventh year of the new century.

1893-1894. The twelfth year of the new century. The twelfth year of the new century. The twelfth year of the new century.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XV

Ottawa, August 1, 1925

No. 10

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Re Proposed Canadian Freight Classification No. 17

File 33365

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I

It became apparent some years ago that a revision of the Canadian Freight Classification was desirable, to take care of the many changes in transportation and commercial conditions which had developed. The recommendations which have been brought about by commercial and transportation changes are indicated in a summary way by the fact that while the rules and ratings in the current Classification No. 16 comprise less than 100 pages, in the proposed Classification No. 17 they comprise 271 pages.

The work of revision began in 1914. War conditions and other factors, including the amount of work involved, prevented the first proof of the Classification No. 17 being filed with the Board until 1916. Since that date, there has been constant consideration of the matter.

II

On matters affecting general rate changes, the Board has more than once drawn attention to the fact that it is an advantageous procedure to exhaust the methods of conference before turning to the Board. Such procedure clarifies and defines the issue, and by bringing to the Board for its consideration the irreducible minimum of grievances the matter can be more clearly and expeditiously dealt with.

In matters concerned with classification, a similar procedure is advisable. Many technical terms and descriptions involved in connection with ratings affecting trade can be much better dealt with in conference than in a formal presentation of evidence; and a similar advantage attached to the consideration of classification rules in conference as compared with having the whole matter brought into evidence.

Having this in mind, there was organized late in 1920 a special Classification Committee representative of Western and of Eastern Canada. In Eastern Canada, the committee was composed of the Chairman of the Canadian Freight

Association; two representatives of the railways; and three representatives of the shipping public, composed of Messrs. J. K. Smith, of the Montreal Board of Trade, T. Marshall of the Toronto Board of Trade, and S. B. Brown of the Canadian Manufacturers' Association.

In the West, the committee was composed of the Chairman of the Canadian Freight Association at Winnipeg; two representatives of the railways; and Messrs. W. F. McClintock, representing the Associated Boards of Trade of British Columbia; J. H. Hanna, the Associated Boards of Trade of Alberta; Alex. McDonald, the Associated Boards of Trade of Saskatchewan, and G. E. Carpenter, the Associated Boards of Trade of Manitoba.

Approximately 150 days were taken up in meetings. A very large number of shippers' representatives attended these different meetings and discussed matters in which they were interested. As wide publicity as possible was given to the meetings. The result, as was anticipated, enabled through the use of round-table methods of discussion satisfactory conclusions to be arrived at in many cases. Where the matters were not so satisfactory, the procedure followed helped to more closely define the issue.

Considering the nature of the work and the comprehensiveness of a document such as the classification, the number of items in dispute, where certain individuals, firms or organizations are not in agreement with the Special Classification Committee, are relatively very few.

III

Proposed Classification No. 17 was filed with the Board under date of April 9, 1924, and notice respecting same was published in the *Canada Gazette*, as required under section 322 of the Railway Act, and, in addition, copies of the proposed classification with copy of notice of it to the King's Printer, were mailed to the parties specified by the Board's General Orders Nos. 271, 348 and 353, also to other parties to whom the Board have from time to time requested that such information be furnished, with request that their objections, if any, be filed with the Board within thirty days. Subsequently, upon representations from certain parties in Western Canada, the date for the submission of any objections was extended to May 19.

IV

Thereafter, there was set down for hearing on the Board's trip to Western Canada in June and July, 1924, the matter of proposed Canadian Freight Classification No. 17, to afford an opportunity for anyone to speak to matters on which agreement had not been arrived at in the conferences which had taken place. Except at Winnipeg, no question was raised by anyone as to their not having had ample opportunity to consider the changes proposed in Classification No. 17. At Saskatoon, Vancouver, Victoria, Nelson and Lethbridge, there were no representations made to the Board objecting in any way to proposed Classification No. 17. At Edmonton, Calgary and Regina there were representations as to four or five individual items, which are herein dealt with under their appropriate headings.

At the Winnipeg sittings, counsel for the Canadian Council of Agriculture claimed that it had not been afforded an opportunity of taking part in the conferences between the carriers and the shippers, and that there had not, therefore, been an opportunity of fully considering the changes proposed.

Certainly the matter has had wide publicity. It may be noted that the Canadian Council of Agriculture was represented before the Board when Freight Classification No. 17 was spoken to in Winnipeg in 1917.

The exception taken related primarily to the "Mixing Rule," which is referred to later. Protests were also filed against the alleged increase in the

rates. In general terms, exceptions were taken to increases in ratings and in carload minima. These complaints were not specific except in one or two cases—a special example being Salt. Here, it may be noted that Classification No. 17 does not increase the rates or minimum weights to or between points in Western Canada on salt.

Minimum weights are in various instances proposed to be increased. There are a few exceptions where the matter stood to be dealt with by the Board. In the cases agreed upon, there is nothing in the allegations made to show that the increases were unreasonable, taking into consideration commercial conditions and increased power of car loading. In fact, the average loading approximates closely the minimum weights proposed in Classification No. 17.

V

As to the various general and vague statements that changes in classification ratings increased the cost of goods and raised the cost of living, it may be pointed out that the revision of the classification involves both increases and reductions, and from as careful an analysis as is possible with the information in the possession of the Board, it is believed that the revision, taken as a whole, in no way increases in the aggregate the cost of transporting goods, but that as a matter of fact it will probably have the reverse effect. While the volume of traffic in the various articles affected is very controlling, as a matter of information it may be stated that, taking the classification as a whole, the number of increases in less than carload ratings is 162; the number of increases in carload ratings is 177; the number of decreases in less than carload ratings is 344; the number of decreases in carload ratings is 194. Further, that with respect to the following distinctive headings the situation is:—

Distinctive Heading	Number of Changes in Classification No. 17			
	Increases		Decreases	
	L.C.L.	C.L.	L.C.L.	C.L.
Agricultural Implements.....	0	2	5	0
Cereals and Cereal Products.....	1	1	3	2
Chemicals, Drugs or Medicines.....	8	4	38	30
Dry Goods.....	2	1	0	1
Furniture.....	0	2	9	3
Groceries.....	17	4	46	22
Hardware.....	13	13	27	13
Iron or Steel.....	0	0	12	8
Machinery and Machines.....	20	10	26	0
Sheet Metal Ware.....	2	7	11	3
Stationery.....	3	1	2	1
Vehicles (not self-propelling).....	0	13	1	4
Vehicle Parts (other than self-propelling vehicle parts).....	0	12	5	2
Woodenware, or Indurated Ware.....	1	4	1	0

With regard to the increase in carload ratings, it may be explained that these do not all represent actual increases, for the reason that while in some cases the carload rating has been advanced the minimum carload weight has been reduced, so that the charge per car will be no greater than at present, and, in some instances, there will be a reduction. There are also instances where only one symbol indicating a change is shown but the item covers anywhere from half a dozen to ten or twenty different articles or commodities.

VI

The Winnipeg Board of Trade filed with the Board objections to quite a number of items in proposed Classification No. 17, and at the suggestion of the

Board a conference was held, a few days prior to the hearing, between representatives of the Winnipeg Board of Trade and the carriers, attended by the Board's Chief Traffic Officer, at which all the contentious items were discussed and satisfactorily adjusted. The carriers agreed in some instances to make the changes that were desired, and in other instances after discussion the representatives of the shippers withdrew their requests. There was read into the record at the Winnipeg sittings the following letter covering confirmation of what is briefly referred to above:—

“WINNIPEG, MAN., July 14, 1924.

“*To the Board of Railway Commissioners for Canada.*

“MR. CHAIRMAN AND GENTLEMEN,—In the matter of proposed Freight Classification No. 17 and correspondence with your Board dated May 13, 15, 19 and 28, containing certain requests for additions and changes, also our revised list submitted June 9. We now advise that at a conference held at the Winnipeg Board of Trade offices Friday, July 11, at which our interested shippers, representatives of the carriers, and your Chief Traffic Officer, Mr. W. E. Campbell, were present, all outstanding items were discussed and a satisfactory agreement arrived at.

“The Shippers Bureau of the Winnipeg Board of Trade therefore withdraw any and all objections to proposed Freight Classification No. 17 as it is at present constituted, it being understood, however, that if any change in principle affecting western Canada is subsequently made, we wish to reserve the right to be heard.

“Respectfully submitted,

“WINNIPEG BOARD OF TRADE SHIPPERS' BUREAU,

“F. E. HAMILTON,

“*Transportation Secretary.*

“J. F. NEWSON,
Chairman.”

VII

With regard to changes generally in proposed Classification No. 17, counsel for the Canadian Council of Agriculture called as witness Mr. Stimpson, superintendent of traffic of the United Grain Growers, Limited. Mr. Stimpson made a general reference to the increase in minimum carload weights, which has already been above referred to. He stated that he could only speak with authority with regard to articles that were handled by his firm. Beyond that his evidence was based solely upon his general experience and opinion. As to articles generally, he stated he had no figures showing whether or not the new carload minimum weights were in excess of average loadings. Specifically, the only article on which he spoke with authority and in regard to which he had particular complaint as to the minimum weight, was barbed wire. This is later dealt with herein under its appropriate heading. (Section XXXIII.)

VIII

Other items specifically brought up at the Winnipeg sittings are dealt with hereafter in their proper order. The complaints in eastern Canada, while more numerous than those submitted in the west, dealt with specific items only and not the general principle of classification. These were heard at the sittings of the Board in Ottawa on December 3rd and 4th last, and are dealt with under their individual headings.

Consideration is given only to those specific items in respect to which objections were filed with the Board. The balance of the proposed classification represents continuance of the present ratings and provision for new articles, as well as increases and reductions. The classification, as submitted,

represents the work of the joint committee of shippers and carriers and naturally contains compromises and, perhaps, some inconsistencies. In dealing with the items specifically referred to, therefore, it should be understood that the Board, in approving the balance of the classification as submitted, does not prejudice the rights of anyone, and it is always open to any party to launch formal application or complaint regarding any matter of classification not herein dealt with, or with respect to alleged unjust discrimination, or any other relevant feature.

IX

THE MIXING RULE

The most contentious matter submitted to the Board in the prairie provinces related to the rule governing different articles shipped in mixed carloads at carload rate, known as the "mixing rule." Consequently, it appears desirable to review the history of this rule.

There is not in the records of the Board a complete file of the Canadian Freight Classification, but No. 9 of June 1, 1893, provided that,—

"When a number of different articles of the same class in carloads embraced in one line of trade are shipped at one time by one shipper to one consignee at one point of delivery, in full carloads, they shall be taken at the rate per hundred pounds for such class in carloads. This rule will not apply on mixed shipments of groceries, hardware, dry goods, iron, etc., but only to different articles of one straight line of trade."

By November 15, 1894, the restriction as to *one line of trade* was abolished and the classification rule permitted the shipment of different articles of the same class in carloads at the rate for such class in carloads; also, articles provided with ratings in different classes could be shipped in mixed carloads at the carload rate and minimum carload weight of the article in the highest class contained in such mixed carload.

In classification No. 10-A, effective September 1, 1897, the rule as to mixed carloads was the same as last above mentioned, with the slight modification that in the case of mixed cars of freight, classified 5th and higher, having a minimum of less than 20,000 pounds, such as woodenware, furniture, etc., the minimum for the mixed carload would be 20,000 pounds at the highest class rate.

The foregoing rule, which permitted unrestricted mixing, was modified February 1, 1902, by an amendment to Classification No. 11. The rule as to mixing was again restricted and amended to read as follows:—

Rule 2. (1) When two or more articles enumerated *under one distinctive heading* are provided with a C.L. rating they will be accepted in mixed carloads at the highest carload rate and the highest minimum weight of any article in the shipment, or if of the same class at the rate for that class; but articles under *different headings* must not be taken in mixed carloads. When any straight shipment of one class equals or exceeds the minimum C.L. weight, C.L. rate for such lot will apply, and the other articles will take the L.C.L. rate to which they belong. But the articles comprised in any one of the following groups, although appearing under different headings in the classification, will be accepted in mixed carloads subject to the above conditions:—

- (a) Agricultural implements, as per pages 11 to 13 of the classification or as amended in this circular, also including churns, engines, portable or traction, when shipped with threshers.
- (b) Ale, beer, porter, cider, aerated or mineral waters, wines and liquors.

- (c) Butter, cheese and eggs.
- (d) Crockery, stoneware, plumbers' crockery, earthenware, glassware, slate washtubs, slate sinks and slabs.
- (e) Electrical goods and dynamos.
- (f) Flax, tow and oakum.
- (g) Groceries, as per pages 14 and 15 of this circular.
- (h) Hardware, iron and wire, as specified on pages 15 and 16 of this circular.
- (i) Machinery, including boilers and smokestacks; also dairy machinery, such as cheese presses, milk vats, curd sinks, curd mills, Babcock testers and weighing cans.
- (j) Paper, stationery, ink.
- (k) Stone, marble and granite.
- (l) Stoves, etc., as per page 73 of classification, or as amended in this circular, including radiators, registers, tinware, stamped ware, enameled ware and agateware.
- (m) Trunks and valises.
- (n) Woodenware, as per page 84 of classification, or as amended in this circular, also including brooms in bundles or boxes, clothes pins, washboards, wood dishes and mop sticks.

Up to this time the classification rule, whether with an open or a restricted mixture, was uniform throughout Canada, and of course the rules above quoted were contained in the classification prior to the creation of this Board or the enactment of the Railway Act of 1903.

The first classification submitted for the approval of the Board was No. 12, which had already taken effect May 1, 1903. This was considered at length at the Board's first sittings in Toronto in June, 1904. The mixing rule contained therein was the same as that of No. 11 as amended, and above quoted, except that it may be mentioned that in classification No. 12 there were additional distinctive headings provided for beyond the list contained in No. 11 and above set out.

The representatives of the Canadian Manufacturers' Association at the Toronto sittings in 1904 argued for the restoration of the unrestricted mixing rule throughout Canada. Subsequently there was a conference between the representatives of the carriers and the Canadian Manufacturers' Association, and a compromise was agreed upon between those parties and submitted to the Board for approval under which the unrestricted mixing rule would apply east of Port Arthur and the restricted mixing, or distinctive heading list system, in the west, also on shipments from the east to the west and vice versa. It was understood that the purpose of this compromise was to continue the adjustment whereby the jobbers at Winnipeg and other western points would be able to do business in competition with their more powerful competitors in the east. On July 16, 1904, the Board issued an order stating:—

“That freight classification known as Canadian Freight Classification No. 12, bearing date May 1, 1903, with Supplement No. 1 thereto and special Ruling Circular No. 1, subject to the modifications and exceptions mentioned herein, be, and the same is hereby, legalized and sanctioned until such time as the Board shall revise, alter or amend the same.”

In pursuance of this order, effective on August 1, 1904, the mixing rule was consequently changed and between points east of Port Arthur the rule was again the same as in Classification No. 10-A above referred to, while west of Port Arthur and on shipments between the east and west, the provisions of rule 2 of Classification No. 11 as above quoted were still applicable, as modified

by the order of July 16, 1904. Except for minor changes this mixing rule has been continuously in effect from 1904 to date, but as there have been some changes in phraseology it is perhaps desirable to set out the exact wording of the present rule of Canadian Freight Classification No. 16, which is as follows:—

Rule 2. (b) On shipments between points east of Port Arthur, Ontario (except petroleum, lubricating oil, benzine, gasoline, naphtha, varnish and turpentine in barrels unless enumerated under one distinctive heading, and live stock), the following rule will govern mixed carloads:

When a number of different articles of the same class in carloads are shipped at one time on one bill of lading by one consignor to one consignee and destination they will be charged the rate for such class in carloads and at the highest minimum carload weight prescribed for any of the articles in the car (actual or estimated weight to be charged for if in excess of the minimum weight) except as provided in rule 1-C. When a number of different articles of more than one class in carloads are shipped at one time on one bill of lading by one consignor to one consignee and destination, the carload rate and minimum carload weight of the article in the highest class shall apply on all the articles that make up the carload (actual or estimated weight to be charged for if in excess of the minimum weight) except as provided in rule 1-C, and also excepting that if the aggregate charge upon the entire shipment is less on basis of carload rate and minimum carload weight (actual or estimated weight if in excess of the minimum weight) for one or more of the articles and on basis of actual or estimated weight at less than carload rate or rates for the other article or articles, the shipment will be charged accordingly. In the case of a mixed carload of 5th and higher class freight, having a minimum of less than 20,000 pounds, the minimum weight for the mixed car shall be 20,000 pounds at the highest class rate.

(c) On shipments between points west of and including Port Arthur, Ontario, and from points east of Port Arthur, Ontario, to Port Arthur, Ontario, and points west thereof and vice versa. (See note.)

Articles under different distinctive headings will not be taken in mixed carloads at carload rates.

When articles under one distinctive heading are of the same class C.L., the carload rating and highest minimum weight for such class will apply.

When two or more articles enumerated under one distinctive heading are provided with different C.L. ratings they will be accepted in mixed carloads at the highest carload rate and the highest minimum weight applicable on any article in the shipment.

When a shipment of one commodity, or a shipment of different articles under one distinctive heading and subject to the same carload rating, equals or exceeds the minimum carload weight, then the C.L. rating for such lot will apply, and any other article not of the same class, or not under the same distinctive heading, loaded in the same car (or cars), will take the L.C.L. rate of the class to which it belongs.

NOTE.—The distinctive headings referred to are shown in black face type—as “Agricultural Implements,” “Hardware,” etc.

The foregoing portions of this rule are subject to the conditions of Rule 3 with respect to shipments aggregating more than one carload.

In the twenty years from 1904 to 1924, there have been only two complaints against the mixing rule as existing west of Fort William and Port Arthur, and these were launched by firms shipping from Eastern Canada.

By 1916 the carriers had completed tentatively the work of revision of Canadian Freight Classification and a proof of same was submitted to the

Board under date of July 15, 1916. Wide publicity was given to boards of trade and shippers' organizations throughout the country. The mixing rule that was contained in this proposed classification read as follows:—

Rule 7. Section 1. Except as provided in rule 10, carload ratings apply only when a carload of freight is shipped from one station, in or on one car (except as provided in Rule 8), in one day, by one shipper for delivery to one consignee at one destination. Only one bill of lading from one loading point and one freight bill shall be issued for such carload shipment. The minimum carload weight provided is the lowest weight on which the carload rating will be computed.

Section 2. (a) When different articles (provided with carload ratings) of the same class are shipped from one station, in or on one car, in one day, by one shipper, for delivery to one consignee at one destination, in carloads, they will be charged at the rate for such class and at the highest minimum weight prescribed for any of the articles; actual weight to be charged for if in excess of the minimum weight (except as provided in section 2 (b) of this rule). Unless otherwise provided in the classification, any article not of the same class loaded in or on same car will take the L.C.L. rate of the class to which it belongs, except as provided in section 3 of this rule.

(b) If the aggregate charge upon any mixed carload shipment of the same class is less on basis of C.L. rate and minimum carload weight (actual weight if in excess of minimum weight) for one or more of the articles, plus actual or established weight at L.C.L. rate or rates for the other article or articles, the shipment will be charged accordingly.

Section 3. When the same article, which on account of shipping conditions or values, is provided with different carload ratings, it may be accepted in mixed carloads at the highest carload rate and the highest minimum weight provided therefor.

It will be observed that this provided for a uniform mixing rule throughout Canada and a wide open mixture of different articles of the same class. This was an open mixture rule of substantially the character that the Board is now urged to direct by the Canadian Council of Agriculture and others in Western Canada. The foregoing rule was objected to by shipping interests in both Eastern and Western Canada, and does not appear from the Board's records to have been endorsed or approved of by any shipper, board of trade, or shippers' organization. The Board allowed a considerable length of time for all parties to consider the changes proposed and granted various extensions up to March 31, 1917, for the filing of submissions. A representative resolution from Western Canada, dated at Regina, March 14, 1917, reads:—

RESOLUTION

Classification No. 17

1. This conference, comprised of delegates from the Boards of Trade of Winnipeg, Saskatoon, Regina, Moose Jaw, Yorkton, Swift Current, Calgary, Edmonton, Lethbridge, and Medicine Hat, the Prairie Provinces Branch of the Canadian Manufacturers' Association, the Saskatchewan Retail Merchants' Association, the Saskatoon Wholesalers' Association, has been called together to consider Proposed Canadian Freight Classification No. 17;

2. After careful consideration and a full discussion of the subject, this conference places itself on record as being strongly opposed to the principles embodied in said Proposed Classification No. 17 inasmuch as it suggests a uniform classification throughout Canada, and fails to take into account conditions, both geographical and industrial, which are materially different east of Fort William and west of Fort William;

3. Further this conference is strongly of the opinion that at the present time, when the time and the energy of our Canadian business men are so seriously taxed in dealing with the many intricate problems precipitated by the war, it is not fitting that they should be called upon to consider a revision of the Canadian Freight Classification;

4. Inasmuch as western Canadian business has been built up on the principles embodied in Canadian Freight Classification No. 16, and as any material change therein would seriously disturb the whole economic situation in the West;

5. Therefore, this conference unanimously recommends that said Classification No. 16 be continued in effect.

A memorandum of conference of representative shipping associations in eastern Canada, dated at Toronto, March 27, 1917, reads:—

PROPOSED CANADIAN FREIGHT CLASSIFICATION No. 17

In connection with the communication from the Board of Railway Commissioners of February 12, in which direction is made that any objections to the rules and conditions of carriage in proposed Canadian Freight Classification No. 17, shall be filed with the Board prior to March 31.

A conference was held in Toronto on the 27th of March, at which were present representatives of the Canadian Manufacturers' Association, the Boards of Trade of Belleville, Brantford, Hamilton, Kitchener, London, Montreal and Toronto, The Fruit Growers' Association of Ontario, and individual shippers and manufacturers, to consider the action to be taken in regard thereto.

After careful consideration it was unanimously decided that,—

1. The changes proposed by the railways are drastic, and seem to be quite unfitted to the commercial conditions obtaining in Canada, both East and West of Port Arthur. They appear to have been framed largely on conditions existing in the United States, which, owing to the difference in volume of traffic and greater population, are dissimilar.

2. No effort has been made on the part of the Railways to ascertain from shippers and manufacturers what effect the proposed rules and conditions of carriage would have on the business of Eastern and Western Canada; in fact, they have stated to the Board that they are unable to say, with any degree of accuracy, what the results would be.

3. While shippers are unable to determine, generally, the effect the changes will have on their business, they are fully convinced that the adoption of many of the proposed rules would be disastrous to Canadian trade, which has been built up under the present conditions of carriage.

4. The present is not an opportune time to consider such sweeping changes in transportation conditions. Under the present stress of business shippers and manufacturers should not be called upon to consider the proposition in the manner and form in which it is submitted, with the acknowledged lack of information.

5. It is impossible to tell what the commercial conditions will be after the war, and it is, therefore, respectfully requested that the Board direct that the principles of the rules and conditions of carriage of Canadian Freight Classification No. 16 be continued.

Many other boards of trade, and individual shippers, filed submissions with the Board concurring in the above quoted resolutions from Western and Eastern Canada, and many of these referred particularly and specifically to the mixing rule and urged that no change be made therein. Subsequently, sittings were held in both Eastern and Western Canada and objections to the proposed

mixing rule were made at every point at which the Board sat. These hearings except for the one at Fort William, culminated with the sittings at Winnipeg on June 22, 1917. As already stated, objections to the mixing rule had been voiced all over the country. Former Chief Commissioner Drayton dealing with the question of the mixing rule stated (p. 2243):—

"The CHIEF COMMISSIONER: I may say so far that neither Dr. McLean or myself can see any justification for the claim that traffic conditions are exactly the same as they are in the east and that eastern rules can be applied to the west without great disadvantage to the west. In other words, we do not see that the general classification, the eastern classification, can with fairness to the west be extended into western territory."

The Chief Commissioner stated to representatives of shippers that they should go over these trade lists in conference with representatives of the carriers. Again, at p. 2244, the Chief Commissioner stated:—

"The CHIEF COMMISSIONER: With regard to mixing, the trade interests in the west, so far as we have been able to understand, unanimously are against it. So far as the mixing privilege is concerned, the whole of the west think it will destroy their business as they have built it up. As far as that particular matter is concerned, we have come to the conclusion that the adoption of the ordinary rule applying universally in the east, applying as it does in the western and eastern States as well,—that that rule cannot be adopted in Western Canada without detriment to Western Canada, therefore we are not disposed to give any effect to that rule. That is as plain as I can make it."

It may be here noted that the Saskatchewan Retail Merchants' Association were parties to the Regina resolution of March 14, 1917, above quoted. At the Winnipeg sittings of June, 1917, there were also represented the Saskatchewan Grain Growers' Association; the Manitoba Retail Merchants' Association; the Canadian Council of Agriculture; the Retail Merchants' Association of Canada (Manitoba branch). No representations were made on behalf of these organizations in support of the open mixing rule which was provided for in the classification that was then before the Board for consideration and which is now applied for by the Canadian Council of Agriculture. It is manifest that what was involved in the mixing rule was a matter of knowledge.

Following these hearings and acting on the Board's suggestion, the carriers' representatives conferred with various shipping and trade organizations interested in different lines of trade with the idea of having these interested parties agree as far as possible on the details of the proposed classification, after which there would require to be further discussion before the Board, which would then be in a position to decide on further procedure.

On March 8, 1921, the Canadian Freight Association filed with the Board revised proposed rules and conditions of carriage, stating that these had resulted from joint conferences between western interests and the western carriers, and eastern interests and the eastern carriers and there was no division of opinion or controversy as between the eastern and western interests in connection with any of the rules with the exception of the so-called mixing rule—Rule No. 10. Application was therefore made that the matter of the mixing rule be set down for hearing by the Board at various points. The rule as contained in this revision read:—

"Except as otherwise provided, when a number of different articles, for which carload ratings are provided, are shipped at one time by one consignor to one consignee and destination, in a carload, they will be charged at carload rate applicable to the highest classed article, and the carload minimum weight will be the highest provided for any of the articles in the carload."

Proof copies of these proposed rules and conditions of carriage were distributed to boards of trade and other organizations named in the Board's General Order No. 271, located at points in Eastern and Western Canada, and also to all subscribers to the Canadian Freight Classification, which embraced some thousands of names of firms and individuals. Thereafter, the matter was set down to be spoken to at the sittings of the Board during the month of April, 1921, at Victoria, Vancouver, Calgary, Edmonton, Saskatoon, Regina, Brandon and Winnipeg. At these various hearings all the submissions that were made to the Board with regard to the mixing rule were in opposition to the open mixing rule as proposed, and the submissions were all to the effect that the restricted or distinctive heading mixing rule as now in effect should be continued. Ample opportunity was given for any desired submissions to the Board and there were none presented in favour of the open rule above quoted. At the Winnipeg sittings April 27, 1921, the Board was advised that at a conference held in Winnipeg April 26, 1921, to discuss proposed rules of the Canadian Freight Classification, at which the following organizations were represented: Brandon Board of Trade, Calgary Board of Trade, Canadian Manufacturers' Association, Edmonton Board of Trade, Lethbridge Board of Trade, Montreal Board of Trade, Moose Jaw Board of Trade, Regina Board of Trade, Saskatoon Chamber of Commerce, Toronto Board of Trade, Vancouver Board of Trade, Winnipeg Board of Trade. The following was adopted in the form of a resolution:—

"1. It was decided that in the best interests of both Eastern and Western Canada rule 2 and the trade lists of the present classification should be continued and substituted for proposed rule 10 of Canadian Freight Classification No. 17.

"2 It was also decided that a classification Committee representing western boards of trade or other business organizations and railways be named to consult with the present Eastern Classification Committee in connection with the provisions of the new classification.

"3 It was further the opinion of the meeting that there should be no disturbance at the present time in the present class rate relationship now existing in Eastern and Western Canada as a result of the finding of the Board of Railway Commissioners in the inquiries conducted in the Eastern and Western Rate Cases and orders issued in relation thereto, or subsequent orders.

"4 The chairman of this meeting was instructed to submit a copy of this resolution to the Board of Railway Commissioners to-morrow."

The foregoing was unanimously agreed to by all the organizations represented, with the exception of the Saskatoon Chamber of Commerce and the Vancouver Board of Trade. It was explained, however, that so far as the retention of the classification mixing rule was concerned, the Saskatoon Chamber of Commerce was in favour of it. The representative of the Vancouver Board of Trade stated that he could not vote on the resolution until it had been submitted to his Board for their consideration and action.

The proposed mixing rule had been listed for hearing in Western Canada for the purpose of obtaining the views of the people there, and, as already stated, all the submissions were against the proposed rule and in favour of the continuance of the present one. The Board made no direction in the matter, but carrying out the resolution submitted at the Winnipeg hearing, as above quoted, the Special Classification Committees went to work and entirely revised the classification, and in doing so worked along the lines of continuing the present regulations governing mixed carloads. There was a great deal of work involved, and many meetings were held, and under date of April 9, 1924, there was submitted to the Board for approval proposed Canadian Freight Classification No. 17 corrected. Proposed rule 10—the mixing rule—reads:—

Applicable between Points East of Port Arthur, and Armstrong, Ont.

Section 1. Unless otherwise provided, when a number of different articles, for which carload ratings are provided, are shipped at one time by one consignor to one consignee and destination, in a carload (see rule 9), they will be charged at the carload rate applicable to the highest classed article, and the carload minimum weight will be the highest provided for any of the articles in the carload.

Applicable between Points West of and including Port Arthur and Armstrong, Ont., and from Points East thereof to Port Arthur and Armstrong, Ont., and Points West thereof and vice versa.

Section 2. Unless otherwise provided, articles under different Distinctive Headings (see Note) or articles that are not classified under Distinctive Headings will not be taken in mixed carloads at carload rates. When a number of different articles under one Distinctive Heading, for which carload ratings are provided, are shipped at one time by one consignor to one consignee and destination, in a carload (see rule 9), they will be charged at the carload rate applicable to the highest classed article and the carload minimum weight will be the highest provided for any of the articles in the carload.

Section 3. Subject to the conditions of sections 1 and 2, when the aggregate charge upon the entire shipment is made lower by considering the articles as if they were divided into two or more separate carloads, the charges on each separate carload will be based upon the carload rate applicable to the highest classed or rated article therein and the highest carload minimum weight provided for any of the articles therein.

Section 4. Subject to the conditions of Sections 1 and 2, when the aggregate charge upon the entire shipment is less on basis of carload rate and minimum carload weight (actual or authorized estimated weight to be charged for if in excess of the minimum weight) for one or more of the articles and on basis of actual or authorized estimated weight at less than carload rate or rates for the other article or articles, the shipment will be charged for accordingly.

The distinctive headings referred to in section 2, are shown in capital letters, as "Agricultural Implements," "Groceries," "Hardware," etc.

NOTE.—Rule 10 will not apply upon shipments of live stock.

Rule 10 will not apply to carload shipments moving at commodity rates, except where commodity tariffs otherwise provide.

Packages containing articles of more than one class will be rated in accordance with terms of rule 16, section 3.

The Board's regulations call for wide publicity being given to changes in classification that are filed with it for approval, and numerous written submissions were received by the Board dealing with the mixing rule. These were all from individuals and organizations in the Prairie Provinces of Western Canada, the two largest organizations making representations being the United Grain Growers, Limited, and the Canadian Council of Agriculture. It is very evident from the majority of these submissions that there is a good deal of misunderstanding both as to the present and proposed rule relating to mixed carloads.

In the protests made by various individuals and smaller organizations, there was shown a lack of exact understanding as to what was involved. In general, the majority complaining took the position that there was being taken away from the West a mixing system and advantages thereunder which it had formerly enjoyed. As already indicated, the mixing rule is of long-standing and it is not proposed to interfere with it.

As a matter of fact the enlargement of the distinctive lists in proposed Classification No. 17 goes a long way toward a more open mixture, and will enable a much wider mixture than at present exists; for example, the present classification embraces some 250 articles under the heading of groceries, and proposed Classification No. 17 increases this to some 625 articles. Similarly, the hardware list is increased from a mixture of 880 articles to 1,429. Again, under the mixing rule applied for there would not be possible a mixture of boots and shoes, dry goods, groceries, and hardware, because while the carload rating on the groceries and hardware might be fifth class, the rating on boots and shoes would be third class, and there is no carload rating for dry goods. As under the open rule that is sought by these applicants the rating for a mixed carload is that of the highest classed article contained in the mixture, obviously the inclusion of boots and shoes and dry goods in mixed cars would be prohibitive. The obvious misunderstanding could be commented upon at considerably greater length but this would seem to be unnecessary.

On its western trip in the months of June and July, 1924, the matter of proposed Classification 17 was set down so that all matters outstanding might be spoken to. All who had filed submissions were notified of the places of meeting. It was not until the Board was holding sittings in Winnipeg, on July 14 to 16, 1924, that representations objecting to the continuance of the mixing rule were made. The Retail Merchants' Association, the United Grain Growers' Limited, and the Canadian Council of Agriculture co-operated in these representations.

The Manitoba Branch of the Retail Merchants' Association of Canada alleged that the abolition of the present mixing rule and adoption of the open rule would enable small communities to bring in mixed carloads at the carload rate.

The United Grain Growers' Limited, by Mr. Stimpson, argued for the open rule, on the ground that it existed in Eastern Canada as well as in the territory covered by the Western Classification. He also contended that it would help the small merchants, consumers and particularly the farming community.

The evidence given by Mr. Stimpson in regard to what he contended would be the beneficial effects of the "open" rule in the West was based entirely on his experience with binder twine and barbed wire. He was of opinion that in regard to these commodities there might be shipment in mixed carloads which would save some distribution thereof at the less than carload rate; but he did not feel justified in going farther than a mere expression of opinion. So far as general retail business was concerned and the effect of the "open" rule thereof, Mr. Stimpson very frankly admitted, under cross-examination by Mr. Hanna, that he had no detailed knowledge of the retail business and how it would be affected by the "open" rule as against the present mixing rule.

In dealing with classification, the Railway Act while making uniformity the ideal recognizes that absolute uniformity may not be justifiable. Section 322 (1), provides:—

"The tariffs of tolls for freight traffic shall be subject to and governed by that classification which the Board may prescribe or authorize, and the Board shall endeavour to have such classification uniform throughout Canada, as far as may be, having due regard to all proper interests."

The words I have underlined above are significant.

The fact that the "open" rule applies east of the Great Lakes creates no presumption that it should for that reason apply west of the Great Lakes, unless this is justifiable "having regard to all proper interests."

It is further to be noted, in accordance with the lines of guidance indicated in the section, that the class rate scales, which are governed by the Canadian

Classification, do not carry the same relationship between classes in the West as prevails in the East. For example, in the East 5th class is half the 1st; in the West, 4th class is half the 1st.

The adoption of the present mixing rule in the West is, as is abundantly evidenced, an outcome of adjustment to trade conditions in the West. This has been most urgently urged by these "trade interests." It is not a matter in which the railways are really interested. As I understand their position, it is a matter of relative indifference to them which rule is adopted in the West. Their concern is simply adequacy of revenue. When a practice which has been in existence for years, and which was installed at the instance of the shipping public, is attacked, a special burden of proof is on those so attacking. A considerable part of what was advanced was based on misapprehension. In so far as there was specific evidence—and it was meagre—it fell far short of being conclusive.

It is not the function of the Board to tear up rate and rating adjustments regardless of the effect of such rearrangements. Especially is it true that when rating arrangements and rules thereunder, have grown up not only with the support but also as the result of the insistent demand of the great generality of the shipping public engaged in distributive merchandising, the Board should interfere not because of conjecture but because of actual proven unreasonableness or unjust discrimination. No evidence justifying such conclusions in regard to the present rule has been adduced.

X

RULE 7

This is the rule relating to graduated increased minimum carload weights for box cars over 36 feet 6 inches in length and flat or gondola cars over 36 feet 10 inches in length; that is to say, with respect to articles subject to this rule the minimum carload weight specified therefor in the classification only governs when loaded in cars not exceeding the lengths just mentioned, and when loaded in longer cars they are subject to a higher minimum weight. The corresponding provision at present in Classification No. 16 is rule No. 1. At present the increased graduated minimum carload weights apply to all freight. In proposed Classification No. 17 the rule will apply only on those articles specifically made subject to the provisions of rule 7, which means that under the provisions of Classification No. 17 the rule will have a very much more restricted application as, speaking generally, it is only freight of light and bulky character that is made subject to the rule. This material change is to the advantage of the shipper, because it removes all possible ground for controversy and applies the same minimum weight whether loaded in a 36-foot or a 50-foot car with respect to all freight not made subject to the rule.

It was contended by the Hamilton Chamber of Commerce and the Dominion Cannery Limited that there should be incorporated in this rule a provision that when a 36-foot 6-inch car is ordered and a 40-foot car is supplied the minimum of the 36-foot 6-inch car should be protected. On the record this is the practice. Where, however, the shipper uses the entire space in the car, the minimum of the car used applies. No evidence showing grievances in regard to this matter was filed.

The rule may be approved subject to the right of any shipper affected to bring the question of reconsideration up at any time.

XI

RULE 13

Section 2 of proposed rule 13 reads:—

“When freight is loaded in a car by shipper and such car is not fully loaded but is tendered as a carload shipment, and the car is forwarded without other freight therein, the shipment will be charged for as a carload.”

Representative of the Goodyear Tire and Rubber Company, Limited, Toronto, expressed the opinion that the foregoing provision was not clear, and asked who was to judge whether the freight was a carload or a less than carload shipment.

The principle of the rule itself, as proposed, was not objected to. It would appear that the rule as proposed is clear in wording and intent. At the same time, the doubt raised will be fully met by adding after the word “tendered,” which is the tenth word in the second line of the proposed rule, the following words “by the shipper.”

Section 3 of proposed rule 13 reads:—

“Unless otherwise provided, owners are required to load into or on cars and to unload from cars all freight carried at carload ratings.”

In connection with the foregoing provision the representative of the Goodyear Tire and Rubber Company, Limited, Toronto, raised the question as to the responsibility of the carriers in connection with the protection of the freight during process of loading or unloading. In the case of goods in carloads shipped from or destined to a private siding or station, wharf, or landing where there is no duly authorized agent, the provisions of section 6 of the bill of lading are pertinent, viz.:—

“Goods in carloads shipped from a private siding or a station, wharf, or landing, where there is no duly authorized agent, shall be at the risk of the owner until the car is lifted or bill of lading is issued by the carrier, and thereafter shall be at the risk of the carrier. Goods in carloads destined to a private siding, or station, wharf, or landing, where there is no duly authorized agent, shall be at the risk of the carrier until placed on the delivery siding.”

With regard to public delivery or team tracks, it was very clearly and definitely stated by the representatives of the carriers that present practices would not be disturbed. The representative of the Goodyear Tire and Rubber Co., Limited, stated, at p. 9706, that if present practices were not to be changed he had no objection to the rule.

The question of the railways supplying checkers on team tracks, while not relevant to classification, was injected into the discussion. This matter is governed by the circular of instructions issued some years ago under the direction of the Board; and there was at the hearing an undertaking of Mr. Ransom that the practice was not being changed.

Some suggestion was made that rule 13 might conflict with the rule 11, section 5, dealing with “follow lots.” Mr. Ransom is clearly on record that the owners would not be required to load the excess or “follow lot” into cars, and that the provisions of section 2 of rule 13 would not be applicable.

Subject to specific complaint on evidence adduced, the rule may be allowed.

XII

RULE 15

At the Winnipeg sittings, reference was made to proposed rule 15—known as the minimum charge rule—reading:—

“The minimum charge for a single shipment of less than carload freight between any two stations of one carrier will be 100 pounds at first-class rate but not less than fifty (50) cents.”

Mr. Stimpson, of the United Grain Growers, Limited, suggested the adoption of the rule in effect in the Consolidated Freight Classification in the United States, which provides, in substance, for the minimum charge to be computed at 100 pounds at the class rate applicable, but in no case less than fifty cents. In other words, under the Canadian rule the charge is 100 pounds at first-class rate on second or third-class, etc., freight, while under the American rule the charge would be 100 pounds at second or third class as the case may be, subject to the 50-cent minimum. Mr. Stimpson stated that the change suggested would be of advantage to them in connection with shipments of car liners and empty sacks. The rule as proposed in Classification No. 17 is not in any way changed from that at present in effect, and in principle this rule has been in effect for the past forty years, during which period there have been only one or two complaints against it. The Special Classification Committee composed of representatives of both carriers and shippers agreed unanimously on the rule as contained in proposed Classification No. 17. The matter was not sufficiently developed in evidence at Winnipeg to enable the Board on the present record to give careful consideration to a suggested change and reach a definite conclusion with regard thereto. The matter may be left open for applicants or anyone else to launch formal complaint at any time to enable it to be thoroughly developed, thus enabling intelligent consideration and determination by the Board, which is not possible on the meagre record now before it.

XIII

BAGS AND BAGGING

(Page 50, Items 30 and 40)

COMPLAINT OF SECURITY CARTAGE AND STORAGE CO., LTD., CALGARY, ALBERTA

(File 33365.34)

Bags and bagging, cotton, jute or linen, are under the distinctive headings of “Groceries” and “Hardware” in Classification No. 16. In Classification No. 17 these articles are provided for on p. 50 under their alphabetical heading, consequently will not mix, in the territory described in section 2 of rule 10, in carloads of groceries and hardware. The Security Cartage and Storage Company, of Calgary, in a letter dated May 15, 1924, objected to the proposed change, desiring continuance of bags and bagging under the distinctive headings referred to.

The Winnipeg Board of Trade made a similar request, but at conference held between representatives of the interested shippers and the railway companies at Winnipeg on July 11, this request was withdrawn by the shippers' representatives, so that aside from the protest of the Security Cartage and Storage Company, there is no objection before the Board to the proposed classification provision.

Although notified of the sittings at Calgary on July 7, 1924, at which proposed Canadian Freight Classification No. 17 was listed for hearing to afford interested parties an opportunity to speak on matters on which agreement had not been arrived at, the Security Cartage and Storage Company did not appear nor make any representations to the Board. The proposed classification provision being acceptable to the hardware and grocery trades, and complainants not having taken advantage of the opportunity afforded them of developing in what manner they are interested or affected, the provision shown in Classification No. 17 for bags and bagging may be approved.

XIV

CARLOAD RATINGS ON BASKETS

(Page 52, Items 5-7-16-18)

COMPLAINT OF CANADA WOOD PRODUCTS COMPANY, ST. THOMAS, ONT. (FILE 33365-38)

The complaint is with respect to carload rating only. At the present time baskets, all kinds, C.L., are rated 10th class minimum 20,000 pounds, as per item 38, page 67, Canadian Freight Classification No. 16. In proposed Classification No. 17 the following carload provision is shown:—

Page	Item	Baskets—	C.L.
52	5	Bakers', butchers', or laundry: Minimum weight 10,000 lbs.	3
	7	Berry, fruit, plant or vegetable shipping, sheet or stave veneer: Minimum weight 20,000 lbs. Minimum weight 30,000 lbs.	7 10
	16	Stave and splint, N.O.I.B.N.: Minimum weight 10,000 lbs.	3
	18	Wicker, willow or rattan, other than bakers', butchers' or laundry: Minimum weight 12,000 lbs.	3

It is understood the foregoing items in proposed Classification No. 17 are those in which complainants are interested.

A representative of the complainants did not appear before the Board at the Ottawa sittings December 3 and 4, but they forwarded written submissions and there was discussion in respect thereto with the carriers' representatives at sittings in question.

The lowest rating in the Canadian Freight Classification is 10th class, applying on low-grade commodities in carloads such as lumber, coal, cement, brick, paving blocks, plaster, gravel, sand, scrap iron, stone, lime, etc., etc. The recognized classification minimum weight attaching to these 10th class carload commodities is 30,000 pounds per car, as prescribed by rule 1 of Classification No. 16. Many of these 10th class commodities weigh heavily and the actual average carload loading is considerably in excess of 30,000 lbs. In Classification No. 16, however, there are also a number of bulky commodities provided for at 10th class carload rating and with a carload minimum weight of 20,000 pounds, or 10,000 pounds, below the normal minimum weight, and, generally speaking, these articles do not load in excess of the lower minimum weight specified, and in many instances considerably below that figure. The Principal items provided for in Classification No. 16 at 10th class and this very low carload minimum weight, are barrels, baskets, lumbermen's boats, wooden boxes, corn cobs, wooden crates, hay, husks and hulls, sawdust and shavings, firkins, pails or tubs. In revising the classification the Special Classification Committee have, generally speaking, advanced the carload rating on these articles, the following of the items above enumerated being advanced from 10th to 7th class:

wooden barrels, wooden boxes, corn cobs, wooden crates, husks, firkins, pails, tubs. The provision for lumbermen's boats was not carried forward to Classification No. 17. Hay was left at 10th class but the minimum carload weight was advanced from 20,000 to 22,000 lbs. Sawdust and shavings were left at 10th class but the minimum carload weight was advanced to 30,000 lbs.

Before the proposed ratings were arrived at the matters involved were discussed in conference by the representatives of the various basket manufacturers, and the Special Classification Committee. With the exception of the complainant, there was agreement.

Baskets rated at 3rd class minimum 10,000 lbs. approximate the earnings per car produced under rating of the 7th class minimum 20,000 lbs., taking for the purpose of computation shipments from Rodney, Ont.—one of the complainants' points of manufacture—to various destination points in Ontario, which is complainants principal distributing market.

Statements were filed by the complainant in regard to this traffic. Unfortunately these did not show the actual weight loaded—they simply showed the minimum weights, consequently, the figures filed did not permit actual loading to be checked against minima.

There is nothing before the Board which would justify it saying that taking into consideration the rating provided on other articles, and considering bulk, weight, tonnage volume, risk, cost of cartage, etc., the ratings and minimum proposed are unreasonable.

Mr. Ransom stated that with respect to item 18 on page 52 they were prepared to change the proposed minimum carload weight of 12,000 pounds to read 10,000 pounds, and this is provided for by the list of changes that has been filed with the Board covering amendments made since proposed classification No. 17 was first submitted for approval. With the amendment just referred to the proposed provision for baskets in carloads may be approved.

XV

STATIONERY AND SCHOOL BOOKS

In mixed carloads

(Page 58, Item 3)

COMPLAINT OF L. C. WILSON, CALGARY, ALBERTA (FILE 33365-43)

Subsequent to the sittings of the Board at Calgary at which matters in connection with proposed classification No. 17 were listed for hearing, Mr. L. C. Wilson wrote the Board under date of July 24, 1924, concerning mixture of school books and stationery, in carloads, as follows:—

"I buy stationery and school books in Toronto, some of them from the same firm. Stationery I am able to have shipped in pooled cars from Toronto to Calgary, but on school books I have to pay first class freight rate.

"At one time it was possible to include school books in these stationery cars and get the car-lot rate. I understand, however, that some of the western jobbers were responsible for this arrangement being discontinued. It would mean a considerable saving to me if I were able to bring these school books in in mixed cars at the car-lot rate.

"I understand that the question on mixed cars is now before your Board, and hope that you will give this matter your consideration."

The reply by Mr. Ransom, of the Canadian Freight Association, to this application reads:—

"Mr. Wilson is wrong in his understanding that school books were, at one time, included in the stationery list, and that western jobbers

were responsible for the arrangement being discontinued. My records do not indicate that school books were ever in the stationery list and this is the first application received to add them to such list. Other shippers, dealing in school books to a much greater extent than Mr. Wilson, are handling them in straight carloads under the present classification and possibly they would object to the change proposed. I have investigated and find that the total shipments for Mr. Wilson would approximate about 3,500 pounds per annum.

"School books are classified third class in carloads, whereas stationery is classified fourth class and shippers of stationery advise that they are not interested in this application and would not include school books in their stationery cars even though school books were classified under the heading of stationery in the Canadian Freight Classification. The inclusion of 3,500 pounds of school books, Mr. Wilson's total shipments for the season, if forwarded in one car of stationery, would result in a higher toll on the entire shipment than if the stationery was shipped at the carload rating and the school books at the L.C.L. rating. Shippers of stationery would therefore object to including school books in their cars.

"In view of the above explanation, we trust the Board will, on due consideration, advise Mr. Wilson they are not prepared to order any change in the existing ratings.

"A copy of this letter has been sent to Mr. Wilson."

The classification has never provided for the mixture of school books and stationery in mixed carloads at the carload rate and in view of the fact that the carload rating on stationery is fourth class while on the school books it is third class, and that the rule as to mixing provides for the application of the carload rate provided for the highest classed article in the mixture, it seems clear that the transfer of school books from their alphabetical heading, as at present and as in proposed Classification No. 17, to the stationery list at the present ratings would not be of any benefit to the applicant, for the reasons outlined by Mr. Ransom. Nothing has been adduced alleging that the present ratings on school books are in themselves unreasonable, and there is nothing on the record that would justify the Board in reducing the carload rating on school books, and including them in the stationery list, for the sole purpose of enabling the application of the carload rating on a less than carload shipment of school books. The present carload rating on school books was prescribed by order of the Board No. 4680, dated May 7, 1908.

XVI

CARLOAD RATING ON BUTTER BOXES

(Page 59, Item 12)

COMPLAINT OF THE SASKATCHEWAN DAIRY ASSOCIATION, *et al.* (FILE 33365.14)

Item 12, page 59, of proposed Classification No. 17, covers bail, blacking, butter, fig, grease, salt, spice or tobacco boxes, wooden. The carload provision shown therein is sixth class, minimum weight 16,000 pounds. This has been subsequently amended, in mimeographed list of changes and additions to proposed Classification filed with the Board, to rating of 7th class, C.L. minimum weight 18,000 pounds. At the present time the provision for carloads is 10th class, minimum 20,000 pounds, as per item 48, page 69, of Classification No. 16. There is no complaint before the Board as to the proposed provision for any

of the wooden boxes other than the butter box. It may be further stated that there is no complaint before the Board from any of the box manufacturers in either Eastern or Western Canada. There was a complaint filed by the Alberta Box Company, Limited, Calgary, but by letter from this company dated August 2, 1924, they asked permission to withdraw their objections. They stated:—

“Our case was prepared in the main against the original proposals, time did not allow us to check up fully its effect when all were included as 7th class, 18,000 pounds minimum. We have gone into it now very carefully and find that the amounts involved would be small, so small, that we do not think in fairness we can ask or object to the present proposal, therefore, with your permission we desire to withdraw our objections.”

Mr. Ransom outlined that there had been a conference between representatives of the carriers and interested manufacturers, not only of boxes but also other wooden containers, and agreement had been reached as to the proposed classification revision. More details as to the revision of classification and reasons therefore are to be found herein under the heading of the carload rating on baskets, in the matter of complaint of the Canada Wood Products Company, Limited, of St. Thomas, Ont. (section XIV), consequently to avoid reiteration of the same phases of the matter reference should be made to what is therein stated. The carriers urged that it was inconsistent that the manufactured article—the box—with an abnormally low minimum carload weight, should take the same carload rating as the raw material, and which also carries a higher minimum weight. It may be here mentioned that the raw material is largely carried on basis lower than the class rates under special commodity tariffs. However, we are here dealing with the question of the proper class in the classification for the articles in question rather than with the rates themselves. According to the record, some boxes, such as packing cases, beer boxes and meat boxes, can be loaded to 20,000 or 21,000 pounds per car, but there are other boxes that load lighter. The manager of the Alberta Box Company stated that formerly butter boxes could be loaded to a weight of 20,000 pounds per car. At the time, the trade used 56- 28- and 14-pound boxes, but to-day there is very little call for the 28- and 14-pound boxes, so that boxes cannot be nested, and consequently as a result of a change in the commercial conditions the weight now loaded is below, generally speaking, even the proposed minimum of 18,000 pounds. It was stated in evidence that a carload of butter boxes would run from 13,600 pounds to 14,400 pounds.

The P. Burns Company, Calgary, under date of May 2, 1924, filed objection with the Board to the proposed rating of 6th class, minimum 16,000 pounds, on butter boxes, but when this matter was subsequently listed for hearing at the sittings of the Board at Calgary no submissions were made by P. Burns and Company, with respect to the amended proposal of the carriers, although a representative of Burns and Company was at the sittings and made representations in connection with other features of the proposed classification.

Aside from the foregoing, the objections filed with the Board to the carload provision for butter boxes were from the dairy interests in Saskatchewan, and Mr. D'Arcy Scott, representing the National Dairy Council of Canada. At the sittings of the Board in Regina on July 10, Messrs. Reid, representing the Saskatchewan Dairy Association, McLean, of the Prairie Creameries, and also representing the Saskatchewan Dairy Association; and Pierce, of the Saskatchewan Creamery Company, appeared before the Board and presented their submissions with regard to butter boxes. The parties above referred to, and who are the only objectors before the Board, did not deal with the matter from the standpoint of the proposed classification provision being unreasonable

per se, or inconsistent, and not bearing a fair relationship to the provision for other articles similar in character as respects bulk, weight, value, cost of carriage.

From the evidence butter boxes used in Saskatchewan come, for the most part, from Calgary. Detail as to the volume of business involved was not filed. The Canadian Pacific filed a statement of carlots of butter boxes shipped from Calgary to Saskatchewan destinations in the period January to June, 1924. This shows twenty-two cars to Saskatchewan points, and nine going to Regina. No evidence regarding the Canadian National shipments, in the same period, is before the Board.

According to the evidence the loading averaged 1,700 of 56-pound boxes per car. As pointed out, the question has not been approached from the classification rating, but from the rate standpoint.

Averaging the carlot charges from Calgary to the following destination points in Saskatchewan, viz., Yorkton, Kerrobert, Regina, Moose Jaw, Swift Current, Maple Creek, Carlyle, Wolseley, Shaunavon, Moosomin and Saskatoon, the average increase in the transportation charge on 56-pound butter boxes arising from the rearrangement proposed, would amount to one third of a cent per box, or fractionally, less than 12 cents per ton of butter. The increase involved if spread over the 5,372 dairy producers in the province of Saskatchewan would amount to 12 cents per producer per annum.

Having in view the discussions which have taken place with the manufacturers of these commodities, and considering what has been adduced on behalf of the complainants, it does not appear that a case has been made out for interfering with the classification rating proposed.

XVII

BOXES, SHIRTTWAIST OR SKIRT

with or without covering of cloth, cane, fibre, grass or matting.

(Page 60, Item 32)

COMPLAINT OF THE CHESLEY CHAIR COMPANY, LIMITED, CHESLEY, ONT.
(FILE 33365.39)

The provision in Classification No. 17, so far as relates to L.C.L. shipments only, reads:—

Page	Item		L.C.L.
60	32	Boxes—	
		Shirttwaist or Skirt, with or without covering of cloth, cane, fibre, grass or matting:	
		S.U., not nested.....	1½
		S.U., nested.....	1
		K.D., in boxes or crates.....	2

This complaint related only to the L.C.L. rating of 1½ T-1 as applied to cedar chests, which is one of the description of boxes covered by the item above quoted. There is no complaint before the Board respecting the application of this rating on the other types of boxes covered by the item. Proposed Classification No. 17 merely continues the ratings already in effect in Classification No. 16. The L.C.L. rating of 1½ T-1 has, as a matter of fact, been in effect since 1913. No complaint has previously been lodged against same.

Complainants were not represented at the hearing and their written submission reads:—

"We are one of a few manufacturers in Canada of cedar chests which are a comparatively new article on the Canadian market, having

been sold in quantities only during the past two or three years. They average about 42 x 20 x 20 inches, and weigh approximately eighty-five pounds. They are shipped in crates and according to the classifications of the Canadian Freight Association, one and one half times the first class rate applied to boxes, shirtwaist or skirt, with or without covering of cloth, cane, fibre, grass or matting, and the chests which have no covering have been applied as such. The rate which applies to buffets, dressers, bureaux, etc., is only two-thirds the rate we are charged on the chests, and we feel that an adjustment should be made whereby the rate on cedar chests shall be no higher than first class or the same rate as charged on buffets.

"Will you kindly look into this matter and advise us if you can arrange to have the first class rate apply on this article. We are enclosing a folder showing illustrations of the chests manufactured by us, and trust that you will give this your early consideration."

It will be observed that the only grounds advanced by complainants for reduction is a comparison with the rating provided for buffets, dressers, bureaux, etc.

What was urged as a ground for reduction was a comparison with the rating provided for buffets, dressers, bureaux, etc. A contention advanced is that an adjustment should be made whereby the rate on cedar chests should be no higher than first class, or the same rate as charged on buffets.

No data were filed with the Board making a comparison as between cedar chests on the one hand, and the other articles that would be covered by the same classification item, so far as relates to their bulk, weight, value or other elements affecting the classification, nor were any data filed covering a comparison of this character as between cedar chests vs. buffets, dressers, bureaux, etc. The difference in rating as between these articles does not create any unjust discrimination in the sense that articles competing with each other are being charged unequal tolls, as there is no competition as between cedar chests and buffets, dressers and bureaux. The same relationship exists in the Canadian Classification (present and proposed) and in the Official and Western Classifications.

There are numerous items of furniture that are rated 1st class L.C.L. and also many others that are rated 1½ T-1 L.C.L., as well as D-1. The mere comparison of the ratings on one article with another, if there is no competition between them, does not, in itself, justify a change in the classification. There is no such evidence of comparative relationship. The Board would not be warranted in making any direction as to a change in the present classification on the record before it.

XVIII

CARLOAD RATING ON BROOM CORN

(Page 61, Item 52)

COMPLAINT OF CANADIAN BROOM MANUFACTURERS' ASSOCIATION (FILE 33365.28)

PRESENT		PROPOSED	
	L.C.L. C.L.		L.C.L. C.L.
Broom Corn—		Broom Corn—	
Pressed in bales, C.L. minimum weight 20,000 lbs...	1 5	Pressed in bales.....	1
		Pressed in bales, C.L. minimum weight 16,000 lbs., subject to Rule 7.....	4

It will be observed the change proposed is with respect to the carload rating, reducing the minimum carload weight from 20,000 pounds to 16,000 pounds and increasing the rating from 5th to 4th class. Computations based on the minimum weights under the present and proposed provisions, indicate approximately the same results so far as charges per car are concerned, with respect to shipments between points in Eastern Canada, although in Western Canada it would mean a reduction.

Mr. Ransom, for the Canadian Freight Association, stated that broom corn cannot be loaded in the standard car to a weight in excess of the minimum proposed. There has been an effort on the part of the Classification Committee in the preparation of the new classification to establish, in connection with light and bulky commodities, minimum carload weights more closely approximating what can reasonably be loaded than formerly provided in many instances. No broom corn is produced in Canada, and practically all of it moving to points in Eastern Canada is imported from the United States under the provisions of the Official or Western Classifications, which provide a carload rating of 3rd class, minimum weight 18,000 pounds. Mr. Ransom alleged that the only shipments moving within Canada under the provisions of the Canadian Classification covered instances where the shipment was consigned from its United States point of origin to a point in Canada short of destination and reforwarded hence to final point of destination, the handling in this manner producing in some instances, apparently, a combined toll less than that published from original point of origin to final destination. If Mr. Ransom's statement that broom corn cannot be loaded in excess of the minimum proposed is correct, then this condition to which he refers would not be in any way affected by the proposed change and the reason for complaint is not apparent.

The complainants advised they were unable to be represented at the hearing and forwarded written submissions. In their submission of May 9 complainants stated while it is difficult to load 20,000 pounds in a standard car they prefer leaving the classification as it is to-day to having it changed as proposed. Request was therefore made in that communication that the classification on broom corn in carloads be left as it is. In their further telegraphic submission of December 2 complainants reiterated their position but stated they would have no objection to minimum weight of 18,000 pounds at carload rating of 5th class. No evidence was given on behalf of complainants justifying this reduction in minimum, and such a low minimum weight as suggested in connection with an article taking the 5th class carload rating would be abnormal. Their original submission was, as stated, that the classification remain as at present.

The proposed change makes practically no difference in charges per car in Eastern Canada, and it would therefore seem that the objection has been based on misunderstanding. It brings about a reduction to the receiver in Western Canada. The proposed change may be approved.

XIX

CARLOAD RATING ON BUTTER

(Page 66, Item 48)

APPLICATION OF SASKATCHEWAN DAIRY ASSOCIATION (FILE 33365.37)

At the sittings at Regina July 10, 1924, Mr. J. J. Maclean, representing the Saskatchewan Dairy Association, raised the question of the carload rate and minimum carload weight on butter. In proposed Classification No. 17 no change is being made in the ratings but an increase in the minimum carload weight from 20,000 to 24,000 pounds was proposed.

So far as relates to the question of minimum weight, the carriers have agreed to an amendment restoring the 20,000 pounds minimum, which disposes of this phase of the matter.

With regard to the carload rating, the application was brought on at Regina without previous written notice or submissions from any party and was only developed in a very fragmentary manner. Mr. Maclean stated he would prepare a written statement and submit it to the Board later. Mr. Maclean's written submission, dated September 16, was as follows:—

"In support of our application for a reduction in the classification I enclose a list showing the articles taking third class in the proposed Classification No. 17 (corrected).

"This list shows that, generally speaking, the articles so classified are either bulky, dangerous to handle, fragile, valuable, or the traffic in them is limited.

"Butter seems to be the exception. Instead of being bulky it is packed solidly in square boxes which stow well. It is not dangerous to handle. It is not fragile as the Railways Claim Department's records will show that their claims for damages to butter are lower than the average claims on all other commodities. It is not valuable as the prices range from six (6) cents a pound for the poorest Dairy to forty (40) cents a pound for the finest Creamery. The traffic in it is not limited as 163,456,759 pounds of Creamery were made in Canada last year and doubtless about as much Dairy.

"There was never such a necessity for dairying in this country as there is at the present time. With poor crops in many sections, with taxes so high, and prices of manufactured articles so out of line with prices for raw products, very few farms, East or West, are earning any adequate interest on the capital invested in them and the farmers are looking to their cows to pay their current expenses. To help them the creamery operators are working on a smaller margin than ever before. The classification of butter in line with other food products will help us materially and we trust therefore that you will grant our application and have Classification No. 16 amended accordingly if No. 17 is not to be issued for some time yet."

Chairman Ransom filed his submission in reply under date of January 19, 1925, from which the following is quoted:—

"Carriers contend that the present classification is fair and reasonable when you come to consider the values and the highly perishable nature of this commodity. You will observe that comparison has been made with a great many other articles classified 3rd class in our classification which, with one or two exceptions, are not of a perishable nature and can be handled in ordinary box car service.

"Butter is a commodity that must be loaded in specially clean refrigerator cars and we have had several claims for damage where shipments have been loaded in cars that had previously contained commodities which left an odour that could not be noticed when the car was empty and the doors opened. A condition of this kind could not occur with any of the other commodities mentioned in the comparison made by Mr. Maclean.

"Butter has been classified 3rd class in carloads since the classification was first established in 1884 and we are positive that the present classification is not, in any way, handicapping the manufacture and sale of this commodity.

"This complaint from Mr. Maclean is the only one that we have received from all of the dealers throughout the Dominion in regard to

the rate. Several of them were opposed to the increase in the minimum weight and asked that the minimum of 20,000 pounds be continued, to which the committee have agreed.

"To grant this request would mean a reduction in the revenue of our railways which they are not prepared to voluntarily sacrifice and we trust that on due consideration the Board will concede that no argument has been advanced that would warrant them in ordering a reduction in the carload ratings on butter and that the applicants will be so advised."

A copy of this reply went to Mr. Maclean, who filed his answer under date of January 26. With his submission Mr. Ransom also filed a statement of wholesale and retail prices at Calgary, Regina, Edmonton and Montreal, and the wholesale prices at Winnipeg. Mr. Maclean's answer of January 26 dealt almost entirely with this portion of Mr. Ransom's submission. In substance, Mr. Maclean's contention was that the prices shown by Mr. Ransom were for the choicest grades of butter, and that the lower grades sell for considerably less.

Mr. Maclean also stated:—

"Mr. Ransom is quite correct in stating that butter requires to be loaded in clean cars and that they have paid claims owing to unclean cars being used. However, our contention that they pay less for claims on butter than their average claims for all other commodities still stands."

As to the question of prices, this being an application from the province of Saskatchewan only, I would disregard the submissions above referred to and take the figures of production and value of creamery butter for the province of Saskatchewan as shown in the records of the Dominion Bureau of Statistics and which are set out below:—

Year	Pounds	Price	
		\$	Cents per lb.
1900.....	143,645	29,362	20.44
1907.....	132,803	36,599	27.55
1910.....	1,548,696	381,809	24.65
1915.....	3,811,014	1,055,000	27.68
1916.....	4,310,669	1,338,180	31.04
1917.....	4,220,758	1,575,965	37.33
1918.....	5,009,016	2,221,403	44.34
1919.....	6,622,572	3,495,172	52.77
1920.....	6,638,656	3,727,140	56.14
1921.....	7,030,053	2,552,698	36.31
1922.....	8,901,144	3,066,573	34.45
1923.....	10,867,010	3,632,377	33.42

In this connection the following is also taken from the Dominion Bureau of Statistics monthly bulletin of Agricultural Statistics, vol. 17, No. 192, page 245:—

"Creamery Butter

"The quantity of creamery butter made in Canada in 1923 was 163,456,759 pounds, valued at \$56,894,008, an increase in quantity over the preceding year of 10,954,859 pounds, or 7 p.c., and an increase in value of \$3,440,726, or 6 p.c. The average price per pound for the whole of Canada was 34 cents in 1923, compared with 35 cents in 1922. The production of creamery butter in 1923 exceeds in quantity the production of any previous year and is exceeded in value only by that of 1920, when the average price per pound was 57 cents."

In my opinion the list of other articles taking 3rd class in carloads in proposed Classification No. 17 as furnished by Mr. Maclean does not provide the Board with anything determinative as to the propriety of the rating on butter.

There is, generally speaking, no analogy whatever between the articles compared, the majority of which have been given a 3rd-class rating as a result of classification factors that are entirely dissimilar to the classification elements that would be considered in the establishment of a rating on butter. For example, obviously, different classification elements would be considered in fixing a carload rating on such articles as advertising matter, games and toys, hops, theatrical scenery, billiard tables and fittings, cork, Ferris wheels, etc., than would be given weight when it came to fixation of the rating on butter. With one or two exceptions the articles embodied in Mr. Maclean's list are not of a perishable nature and are handled in ordinary box car service. The conditions with regard to the handling of butter are quite dissimilar as it is a commodity that must be handled in refrigerator cars that are specially cleaned for the purpose.

On this point the following references from cases decided by the Interstate Commerce Commission, in the United States, are pertinent.

In the matter of rates on dairy products, 43 I.C.C. at p. 717, it is stated:—

“The rates selected for comparison with the rate on eggs apply on such commodities as books, advertising matter, glass lamp chimneys, toys and go-carts, coffins, petroleum in tank cars and other commodities, the circumstances and conditions surrounding the movement of which are so obviously dissimilar from those surrounding the movement of eggs that the comparisons are without probative force.”

Again, in 39 I.C.C., at p. 693, *Chas. Platts v. New York, New Haven and Hartford Railroad Company, et al*, in which was involved the question of rates on shucked oysters, comparison had been made by complainant with the ratings on other food products, such as bananas, butter, fresh dressed meat, cheese, fish (fresh or frozen), and live lobsters, and the Commission stated that some of these commodities were so dissimilar to shucked oysters that the comparisons were not helpful.

With reference to Mr. Maclean's argument in the closing portion of his submission of September 16, which is, in substance, that the application for a reduction in the rating on butter is, to some extent at least, based on the premise that there is necessity for assistance to the dairying industry of the province of Saskatchewan, it may be pointed out that this is not an argument that can very well be given weight in considering a classification rating. This appeal is based on grounds that are beyond the powers of this Board. Appeals of this character are still made to the Board, although the Board has very clearly set out on numerous occasions the situation in this respect under the provisions of the Railway Act. For example, in the Board's judgment in the matter of the National Dairy Council of Canada *re* rate on butter, Western Canada to Vancouver and Montreal, it was stated:—

“Counsel submitted that having in mind the ‘necessity of developing mixed farming in Alberta’ the rates were excessive. That is to say, the need of diversifying agricultural production was to be taken as a criterion of what the rate should be.

“At page 1680 of the evidence, Counsel made an argument in this respect, from the standpoint of public policy, as to the necessity of stimulating milk production. At the same time, he frankly stated in this connection, ‘Of course, this is an argument that should be made more to the railways than to the Board.’

“The method of presentation involved in this phase of the matter is not unusual, and on this account a word of comment making clear the nature of the jurisdiction of the Board is justifiable. The Board is given power to deal, *inter alia*, with the reasonableness of the rates. It is

nowhere authorized by Parliament to be an arbiter of industrial policy. Opinions may differ as to different lines of development, but the Board's functions in approaching a rate situation are concerned with ascertaining the reasonableness of the rate, not with applying to a rate situation a preconceived opinion as to what type or method of industry should be helped by a modification of the rate.

"In other words, while members of the Board may and do, as Canadians, sympathize with policies of economic development which may through increasing diversity lead to greater economic solidarity, it is not their general opinions but the powers conferred on them by the Railway Act which determine what they can do. Very wide powers, it is true, are given under the Railway Act; but the Railway Act is not to be construed as if it were a blank cheque to be filled in as members of the Board see fit. It is not the Board's function, as delegated by Parliament, to make rates to develop business, but to deal with the reasonableness of rates either on complaint or of its own motion."

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It was also mentioned at the hearing, as well as pointed out in Mr. Ransom's reply, that there are now in effect commodity rates from certain points in Saskatchewan to Vancouver, also to Montreal for export, which are lower than the 3rd class basis applicable under the Canadian Classification, and it was stated that an appreciable volume of traffic moved under these commodity rates which are already lower than the classification basis. However, the matter was not very fully developed from this standpoint and there is therefore nothing on the record indicating what proportion of Saskatchewan butter moves under the classification basis as compared with that under lower commodity rates.

The Board is here asked to direct a change in the Canadian Freight Classification, which, of course, applies from one end of the country to the other, in respect to a very large tonnage, the production of creamery butter alone in Canada in 1923 being 163,456,759 pounds. The present classification rating has been in effect since the year 1884. There has been no complaint previously, and there is no application now before the Board in regard to this rating, except from the applicants herein referred to.

The record presented does not warrant the reduction in rating asked for.

XX

BARRELS, EMPTY, RETURNED

(Page 69, Item 10)

COMPLAINT OF ONTARIO VINEGAR MANUFACTURERS' ASSOCIATION. (FILE 33365.16)

Complainants objected to the proposed increase in rating on returned empty vinegar barrels, L.C.L., from 4th to 3rd class. Their submission, however, dealt largely with the ratings on vinegar, referring to the large proportion which the freight rate bears to the value of the product and alleging therefrom "that vinegar is already bearing enormously more than its fair share of the traffic burden, and that any change should be downward rather than upward."

The ratings on vinegar are not being changed and there is no complaint before the Board regarding them. The ratings on vinegar or any other commodity, are fixed with regard to the carriage of such commodity, and there is not considered, in connection with the fixation of ratings on a commodity, the question of the return of the empty carrier, in which such commodity was

transported, from the consignee at destination back to consignor at point of shipment, so that in dealing with the ratings on returned empties, the classification of the commodity transported therein is not relevant.

Complainants made reference to the percentage proportion of freight charges to the value of the article. It must be obvious that data of this character are not very helpful in determining the reasonableness of a rating. There are many items both in the way of returned carriers, and on the commodity or article itself, where the same remarks would be applicable. For example, if the value of a half-barrel is \$6.50, as quoted by Mr. Balfour, representing the complainants, obviously the percentage of the freight rate to the value is dependent entirely upon whether it moves a short distance under the rate applicable therefor, or a much greater distance at the higher rate chargeable for the longer haul. Mr. Balfour quoted the freight charge on a returned barrel from London to Hamilton as 20 cents and from Port Arthur to Hamilton as 62 cents. The value of the barrel being a fixed figure (\$6.50) and the freight rate a widely varying one, according to the distance hauled, the percentage of the freight rate to the value of the barrel fluctuates accordingly. Obviously, a freight rate based on a fixed percentage of the value of the article or commodity would be impracticable.

For a great many years—long before the creation of this Board in 1904—there has been provision, with some exceptions, for the carriage of second-hand empty returned carriers at 4th class L.C.L. In proposed Classification No. 17 these ratings, generally speaking, are advanced to 3rd class. The position of the carriers has always been that this low rating on returned empties has been a voluntary concession on their part. Mr. Ransom stated that in revising the Classification it had been their original intention to cancel the ratings on these returned carriers; that on all other articles or commodities no distinction is made between new and old, and they saw no good reason why the same rating should not apply on old barrels as new barrels, and the same with other containers. However, this proposition met with considerable objection from some of the trade, but the classification as amended was agreed to by the various interests such as the barrel-men, the oil-men, the packers, etc. The rating for these barrels when not shipped as returned empties is 1½ T-1, if weighing less than 65 pounds each, and 1st class if weighing 65 pounds or over, so that the returned empty rating is in one case two classes, and in the other three classes below the normal rating.

The revision of the returned empty carrier ratings having been agreed upon between representatives of the carriers and shippers, except in the case of the vinegar manufacturers, they should not, in my opinion, be disturbed, and I am further of the opinion that it would not be reasonable or consistent to make exception in the case of the wooden vinegar barrels, leaving the ale, beer, fish, gasoline, grease, meat, mineral water, oil, syrup, wine and liquor barrels at a higher rating. There is no complaint before the Board as to the rating on the barrels last named, and I do not consider it unreasonable. The classification as proposed may be approved.

XXI

EMPTY BISCUIT TINS, AND WOODEN CASES, RETURNED

(Page 69, Items 18, 20, 30 and 32)

COMPLAINT OF THE MCCORMICK MANUFACTURING COMPANY, LIMITED,
LONDON, ONT.

(FILE 33365.20)

Complainants, in letter to the Board dated May 7, 1924, set out their objection to proposed change in L.C.L. rating on returned empty biscuit tins and

wooden cases from 4th to 3rd class. Although duly notified, they were not represented at the Ottawa sittings of the Board at which the various items in Classification No. 17 to which objections had been taken by various interests were listed for hearing. Complainants referred to the large amount of money paid out each year in freight charges for returned empties and the large percentage of tare weight to the gross weight on the outward shipments of their products, and also advanced other reasons in support of the contention that the rating on returned empties should be kept as low as possible. With regard to percentage of tare to gross weight in connection with this firm's outward shipments of their products, their position is not in any way exceptional. Their objections have been carefully considered. What is here involved has in principle been dealt with in connection with the complaint of the Ontario Vinegar Manufacturers Association regarding the rating on returned empty vinegar barrels (section XX). The rating for the articles here complained of, when returned empty, is in some cases two, and in others three, classes lower than on the article when shipped new, and for the reasons already outlined in the matter of the other complaint herein referred to the provision as proposed in Classification No. 17 may be approved.

XXII

CARBIDE OF CALCIUM

Minimum carload weight of

(Page 80, Item 46)

APPLICATION OF

CANADA CARBIDE CO., LTD., MONTREAL

(FILE 33365.29)

The question of minimum carload weight on carbide of calcium is here involved and not the ratings. It appears that in revising Classification No. 16 the Classification Committee primarily contemplated provision for minimum carload weight of 36,000 pounds on this commodity. This was subsequently modified and in the proposed Classification as now before the Board for approval is shown as 30,000 pounds. The present minimum carload weight is 24,000 pounds. Speaking generally, the present minimum carload weights were established a great many years ago when both the carrying capacity of cars, and, in many instances, the commercial conditions, were quite dissimilar to those existing to-day, and one of the principles of the revision of classification has been to increase minimum carload weights where this is possible, having regard to the interests of both shippers and carriers. The applicants, in letter dated May 16, 1924, drew the Board's attention to the proposed increase from 24,000 to 36,000 pounds and stated that the increased weight would be more difficult to properly load in the car and require considerable bracing; further alleging that it would work a hardship on some of the receivers of this commodity. They further stated that in discussion with the Classification Committee they had suggested a compromise at 30,000 pounds, and their submission to the Board was that if it was not considered that the present minimum weight could be maintained that it be fixed at 30,000 pounds. In further letter dated June 5, applicants stated they had been advised that the Classification Committee had agreed to reduced minimum carload weight of 30,000 pounds and if the Board could not see its way clear to reduce this to 24,000 pounds they considered it advisable to withdraw their protest rather than have the matter go

to a hearing. They stated they would like the Board to consider their submission but did not want to press it to the point of a hearing.

There is so little before the Board on the record that I do not think it would be warranted in directing any change in the minimum weight provided for in Classification No. 17. It is evident that there is no difficulty in loading this weight in the car and it is also the compromise figure that the applicants themselves suggested in discussion with the Classification Committee. It is noted that in the United States the minimum carload weight is 36,000 pounds. The proposed minimum weight seems to be suitably related to that provided for other commodities which from a transportation standpoint might be considered analogous and as shown under the same distinctive heading, viz., "Chemicals, Drugs or Medicines" in Classification No. 17.

XXIII

ELECTRIC STOVES, COOKING, N. O. I. B. N.

(Page 107, Item 12)

COMPLAINT OF CANADIAN STOVE FOUNDERS, *et al* (FILE 33365.33)

The current item in Canadian Freight Classification No. 16 is item 34 on page 126, reading: "Stoves, ranges, and heaters, N. O. S." This item is under the distinctive heading: "Stoves, stove furniture, furnaces, and parts thereof," which, with respect to the provisions of present Classification rule 2 (c)—the mixing rule from Eastern to Western Canada—enables the inclusion of these stoves, ranges and heaters in mixed carloads with the other articles shown under the distinctive heading in question. So far as shipments between points in Eastern Canada are concerned, the provisions of Classification rule 2 (b) apply, which permit the mixture of all articles of the same class in carloads, or when different articles of more than one class are shipped in a mixed carload they are charged for at the carload rate and minimum carload weight of the article in the highest class. The carload rating on stoves, ranges and heaters, N. O. S. is 5th class.

In proposed Classification No. 17 a revision of classification on stoves, ranges, heaters, and parts thereof, is provided for; new items being included and various changes made in descriptions and ratings from those contained in Classification No. 16. The wording of the distinctive heading has been changed to read: "Stoves, ranges, and heaters, other than electric, and parts." The electric stoves, cooking, N. O. I. B. N., having been provided for on page 107, under their alphabetical heading, at carload rating of 4th class, as compared with the present 5th class rating. The minimum carload weight has been reduced from 24,000 pounds, as at present, to 20,000 pounds.

With respect to the mixing privilege under the proposed change, in Eastern Canada the inclusion of electric stoves, in cars with other stoves, ranges and heaters will bring about the application of the 4th class carload rating on the mixture of 4th class and 5th class goods; with regard to shipments between points west of Port Arthur and from points east thereof to Port Arthur and west, and vice versa, the electric cooking stoves will not mix with other articles at carload rating, on account of their being shown under their alphabetical heading instead of under a distinctive heading or trade list.

So far as relates to the advance in the ratings on electric stoves, Mr. Ransom, for the Canadian Freight Association, pointed out that the present ratings had been in existence since 1907, and at that time there were no electric stoves being manufactured and shipped between Canadian points. The classification item in question, therefore, did not contemplate or cover, as originally

established, electric stoves. Subsequently there was a proposition to make specific provision for electric stoves at higher ratings than provided on the others, but the matter was finally left in abeyance pending the revision of the Classification that was then in hand.

In the original written submission from the Canadian Stove Founders, dated May 14, 1924, they set out their objections to any change either as to ratings or mixing privilege from the provisions of Classification No. 16. However, at the hearing, the parties signatory to the written submission in question individually stated that their views had been modified. There was considerable difference of opinion amongst the various parties interested in the manufacture and shipment of electric cooking stoves as to what the proper ratings should be and what mixing privilege should be allowed in connection with traffic moving under the provisions of proposed Classification rule 10, section 2, (the mixing rule to the west).

As already pointed out, there are the two features: first the ratings themselves; and second, the mixing privilege.

With regard to the ratings, while it would appear that, in some cases, an increase will be effected in the L.C.L. ratings, there was nothing submitted on the record, by any of the parties, dealing specifically with the reasonableness or otherwise of the proposed L.C.L. ratings. The parties chose to confine their submissions to the question of the carload rating, and in connection with the latter the basis of comparison and evidence was to the effect that electric cooking stoves should not be rated higher than gas stoves. In view of this, and as the L.C.L. ratings on the electric cooking stoves are the same as provided for the gas stoves, and there is no complaint before the Board with respect to the latter, I think the assumption is warranted that the question of the L.C.L. ratings is not in reality before the Board on this record, and therefore does not require further comment.

With respect to the carload rating of 4th class on the electric cooking stoves as compared with 5th class on the gas stoves, it appears that the proposal of the Special Classification Committee was to provide a 4th class rating on gas stoves with a minimum carload weight of 16,000 pounds, but in conference between the Classification Committee and interested manufacturers that was objected to because the manufacturers desired continuance of the privilege of mixing gas stoves with coal, wood, charcoal, etc., stoves at the 5th class carload rating, and the Classification Committee accordingly agreed to this, although originally taking the position that 4th class was the proper rating for gas stoves in carloads. However, with respect to the electric cooking stoves the carriers contend that a 4th class carload rating is proper, and justified largely on the question of value. It was admitted by all the manufacturers appearing before the Board that there was appreciable difference in value. Mr. Moffat, of Moffat's Limited, Weston, Ont., stated that when taking out some figures about a year ago the difference in value as between gas and electric stoves was about 40 per cent, but that this spread is decreasing. Mr. Beach, of the Beach Foundry Limited, Ottawa, expressed the matter differently by stating that the price of the electric stove ranged approximately 5 cents per pound gross higher than the gas stove. Mr. W. G. Nuttycombe, of the McClary Manufacturing Company, London, Ont., filed a statement indicating that from the standpoint of value per cubic foot or value per pound the electric stove exceeds appreciably in value the gas stove. With regard to the 4th class carload rating there was really objection to this from but one manufacturer, viz., Mr. Moffat. Mr. Beach stated it was the mixing privilege he was concerned with rather than the rating. Mr. Nuttycombe, of the McClary Manufacturing Company, stated that he considered the 4th class carload rating on electric stoves was a fair and reasonable one and from the standpoint of value alone they could not expect 5th class carload rating. Mr. Campbell,

of the Canadian General Electric Company, and who also represented by proxy the National Electric Company, the Renfrew Electric Products, the Superior Electric Products, and the Westinghouse Company, of Hamilton, stated, in answer to a question from Mr. Ransom, that he had no objection to the provision as proposed by the carriers in Classification No. 17. It is not clear from the record whether in making that remark Mr. Campbell desired to have it understood to include the other firms for whom he held proxies. While various comparisons as to value were put on the record at the hearing, both orally and in statements filed, it would seem that on account of there being so many variations in types of both kinds of stoves and the figures sometimes being the list price and others the wholesale price and again the retail price, that it is almost out of the question to analyse the figures to the point of any degree of definiteness as to the spread in value as between gas and electric stoves. There is the general admission on the record that there is an appreciable difference and one which in the opinion of various manufacturers, as already above referred to, justifies the 4th class carload rating. In view of this and the fact that the 5th class carload rating on gas stoves, which was the basis for the comparison and argument for the application of the same carload rating on electric stoves, was the result of a compromise as between the carriers and the manufacturers having in mind the privilege of mixing with other stoves, then I do not consider that from the record the Board would be justified in condemning the proposed 4th class C.L. rating on electric stoves. It will be further noted that in establishing the rating of 4th class on the electric stoves it was based on the merit of the rating in itself as the carriers did not intend to provide for the mixing privilege with other stoves.

With regard to the second phase of the matter, viz., the mixing privilege, here again there was a wide divergence in the views of the interested parties. Should electric stoves be left where provided for in proposed Classification No. 17, which would necessitate shipments in straight carloads to western Canadian points; should they be placed in the stove list so as to permit mixing with coal, wood, charcoal, alcohol, gas, gasoline, oil or vapour stoves, at carload rating of 4th class; or should they be regarded as more properly belonging to the electrical trade and included in the list of electrical appliances and supplies?

Electric, gas, alcohol, etc., stoves are all made by the stove manufacturers, largely of the same materials, by the same workmen, and they are all stoves. Some parts are interchangeable, e.g., the same door goes on the coal, the electric and the gas stove. It appears that the purely electrical parts of the electric cooking stoves, such as the wiring, switches, etc., are made by the electrical trade, rather than in the stove foundry itself. On the other hand, electric cooking stoves are unquestionably also a product of the electrical trade. Mr. Campbell, of the Canadian General Electric Company, stated that with respect to an electric range listing at \$172 an analysis by their factory engineer showed that \$104.24 of the figure quoted covered that portion of the stove belonging primarily and absolutely to the electrical industry. The Canadian General Electric Company support a factory at Stratford, Ont., which manufactures electric stoves. As far as the Westinghouse Company is concerned their representative's statement is that their electric range is entirely developed by their own engineers and they supply all the electrical apparatus that goes into the manufacture of that range but the stove manufacturer builds the contour of the range. The situation with regard to the other electrical manufacturers was not clearly developed on the record. Upon careful consideration of the record, and having regard to the mixture under the electric and stove lists, I reach the conclusion that in this case electric cooking stoves should be included in both the electric and stove lists at the ratings as proposed. The electric cooking stove is both an electrical product as well as a standard article of stove manufacture, and consequently is entitled to inclusion in both lists on its

merits. It might be here remarked that placing an article in more than one list is of quite common occurrence, not only in Classification No. 16 as at present in effect, but also in Classification No. 17, and in suggesting the inclusion of electric stoves in two lists it is no new departure with respect to mixing privileges in the classification.

XXIV

SALT, CLOTHES LINES, EPSOM SALTS, CHLORIDE OF LIME, BORAX

(Mixing Privileges and Carload Minimum Weights on)

(Pages 130-144, Grocery List)

APPLICATION OF CANADIAN WHOLESALE GROCERS' ASSOCIATION (FILE 33365.13)

With the exception of epsom salts, the articles above named are provided for in proposed Classification No. 17 under the distinctive heading "Groceries" at carload rating of 5th class C.L. minimum weight 30,000 pounds. The Epsom salts are shown under the distinctive heading "Chemicals, Drugs or Medicines" at 5th class, minimum 30,000 pounds, and Mr. Ransom stated there would be no objection to their incorporation in the Grocery list at the same rating and minimum weight. The request of the Canadian Wholesale Grocers' Association with respect to all these articles is that they should be permitted to mix in carloads with groceries at minimum carload weight of 24,000 pounds. The mixing rule stipulates that the minimum carload weight will be the highest provided for any of the articles in the carload, so that the effect of including articles having a minimum carload weight of 30,000 pounds with articles taking minimum of 24,000 pounds is to make the minimum weight for the mixture 30,000 pounds. Of course, if the weight of these articles included in a mixed car were such that the application of carload rate and minimum carload weight of 24,000 pounds on the articles taking that minimum, and the actual weight at less than carload rate for the articles taking the higher minimum, would figure cheaper than the application of the higher minimum weight of the whole carload, the shipment would be entitled to be charged for accordingly. What quantities of these articles are on an average included in mixed grocery cars does not appear on the record. With respect to chloride of lime, Mr. Balfour stated very little was shipped in grocery cars, but no information on this point was given with regard to the other articles.

It was pointed out by the representatives of the carriers that borax is in the "Hardware" and the "Chemicals, Drugs or Medicines" lists at carload minimum weight of 30,000 pounds; that epsom salts and chloride of lime are in the "Chemicals, Drugs or Medicines" list at minimum carload weight of 30,000 pounds; that with respect to wire clothes lines these are in the "Hardware" list at minimum carload weight of 30,000 pounds, and the rope clothes lines are under the heading of "Cordage" at 30,000 pounds.

There is no complaint from any source as to the minimum carload weight on these articles under these other distinctive headings or with respect to straight carload shipments of these commodities. In the case of chloride of lime this moves in large volume in straight carloads for use in the manufacture of paper, for purifying water, etc., and epsom salts also moves in large volume in straight carloads for both the paper and the tanning arts, and as a chemical or drug. It was claimed, therefore, that as these articles were comparatively insignificant portions of the grocery business it would not be reasonable to reduce the minimum carload weight to 24,000 pounds simply as a matter of convenience in mixed cars with groceries when the proposed carload minimum

weight of 30,000 pounds is in itself a reasonable commercial minimum carload weight for the ordinary movements and well within, of course, the carrying capacity of even the smaller standard cars now in use.

The principle of the classification rule that when a number of different articles for which carload ratings are provided are shipped in a mixed carload they will be charged at the carload rate applicable to the highest classed article and the minimum carload weight will be the highest provided for any of the articles in the carload, is a principle of long standing in Canada as well as throughout the United States. The mixed carload rule, in substance, permits the application of the carload rating on an article forwarded in less than carload quantities, and it does not appear why in such cases a lower minimum carload weight should reasonably apply to the mixed carload than governs when the article in question is shipped in straight carload quantities. Further it does not appear that there is any sound ground for reducing minimum carload weights that are in themselves reasonable, and not complained against, for the sole purpose of reducing the minimum carload weight on a mixed carload in which a small quantity of the article in question may be included. I do not consider, therefore, that applicants' request to reduce the minimum weight from 30,000 to 24,000 pounds, on the articles in question should be acceded to. It would appear that possibly this situation is largely conceded by Mr. Balfour as after considerable discussion he made the statement at p. 9645 that,—

“We are asking for 24,000. We are really only interested under 24,000 pounds items in carload quantities, but if the condition is as explained by Mr. Lanigan and you would be forced in granting our request to give up your minimum on 99 per cent of the traffic to grant our request on one per cent, it seems you would not be justified in doing so and we would not be justified in asking it and we would simply say let them stay at the minimum but include epsom salts in the grocery list at whatever the minimum is.”

No evidence was adduced by applicants directed toward an attack on the principle of the classification rule, their request being for an exception to the classification rule in the case of these commodities.

The same provision for epsom salts should be made in the “Grocery” list as in the “Chemicals, Drugs, or Medicines” list, as per page 81, item 38.

SHOE DRESSING OR BLACKING, AND STOVE POLISH

(Page 133, Items 22, 24 and 26; and page 140, Item 11)

COMPLAINT OF F. F. DALLEY CO. OF CANADA, LTD., HAMILTON, ONT.
(FILE 33365.12)

The present and proposed provision for shoe dressing or blacking and stove polish or blacking is as shown below:—

Classification No. 16		Proposed Classification No. 17	
Page 91, Item 38		Page 133, Items 22, 24 and 26	
	L.C.L. C.L.		L.C.L. C.L.
<i>Blacking or Polish, Shoe or Stove—</i>		<i>Dressing or Blacking, Shoe—</i>	
In boxes or barrels.....	2 4	Liquid:	
		In glass or earthenware, packed in barrels or boxes, O.R.B.....	1 ..
		In metal cans, partially jacketed....	1 ..
		In metal cans, completely jacketed....	2 ..
		In metal cans, in crates.....	2 ..
		In metal cans, in barrels or boxes....	2 ..
		In packages named, straight or mixed, C.L. minimum weight 24,000 lbs...	.. 4
		In bulk, in barrels, O.R. Lkge.....	3 ..
		In bulk, in barrels, straight or mixed, C.L. minimum weight 30,000 lbs...	.. 5
		Solid:	
		In fibre or metal cartons, in barrels or boxes.....	2 ..
		In packages, named, C.L. minimum weight 24,000 lbs.....	.. 4
		In bulk, in barrels.....	3 ..
		In bulk, in barrels, C.L. minimum weight 30,000 lbs.....	.. 5
Page 119, Items 56 and 57		Page 140, Item 11	
<i>Polish—</i>		<i>Polish—</i>	
<i>Shoe:</i>		<i>Stove (Stove Blacking):</i>	
Liquid or paste, in glass, earthenware or tin, packed in boxes or barrels..	2 4	In glass or earthenware, packed in barrels or boxes, O.R.B.....	1 ..
In bulk, barrels, O.R. Lkge.....	3 5	In cans, cartons or pails, in barrels or boxes.....	2 ..
Stove, in boxes or barrels.....	2 4	In bars or cakes, in barrels or boxes..	2 ..
		In pails, in crates.....	1 ..
		In bulk, in kits.....	1 ..
		In packages, named, C.L. minimum weight 24,000 lbs.....	.. 4
		In bulk, in barrels.....	3 ..
		In bulk, in barrels, C.L. minimum weight, 30,000 lbs.....	.. 5

It will be noted that the description of package specifications is considerably enlarged in proposed Classification No. 17, ratings being provided for these commodities in certain shipping conditions which are not now specified. Other changes proposed are as set out below:—

Shoe Dressing or Blacking

1. Advance in the carload minimum weight on shipments in bulk in barrels from 24,000 pounds to 30,000 pounds.

2. An advance in the L.C.L. rating when shipped in glass or earthenware packed in barrels or boxes from 2nd to 1st class.

3. A reduction in the ratings on the liquid dressing when shipped in metal cans in crates of one class, the current ratings under the provisions of Classification rule 14 (*m*) being one class higher than proposed.

Stove Blacking or Polish

1. An advance in the L.C.L. rating from 2nd to 1st class when shipped in glass or earthenware packed in barrels or boxes.

2. A reduction in the L.C.L. rating when shipped in bulk in barrels from 2nd to 3rd class.

3. A reduction in the carload rating when shipped in bulk in barrels from 4th to 5th class, but an advance in the C.L. minimum weight from 24,000 pounds to 30,000 pounds.

Mr. Sinnott, representing the F. F. Dalley Company of Canada, Ltd., Hamilton, Ont., appeared before the Board objecting to what is set out in proposed Classification No. 17. Mr. Sinnott's position is set out on the record as follows:—

“We desire to oppose the proposed L.C.L. rating on shoe and stove polish in glass. We would be content to allow the L.C.L. ratings to remain as they are in Classification No. 16, but if you will not consent to this, we propose that you reduce the L.C.L. rating on shoe and stove polish, solid in tins, to third class. We think also that these articles should be given fifth class C.L. when packed in glass or tin and shipped in barrels or boxes, and if this concession were made we would not oppose the raising of the minimum to 30,000 pounds instead of the present minimum of 24,000 pounds.”

Mr. Sinnott did not develop during the hearing the matter of the increase in the C.L. minimum weight on the commodities when shipped in bulk in barrels, so that there is nothing on the record relating to the reasonableness of the minimum carload weight, or indicating whether or not there is any real objection thereto.

In the revision of the classification the Special Classification Committee endeavoured to introduce more consistency in the rating as between articles shipped in glass, or earthenware, and the same articles shipped in fibre, or metal cans. The principle generally followed has been to introduce uniformity of one class, L.C.L., between the glass or earthenware container on the one hand, or the fibre or metal can on the other.

Another matter to which Mr. Sinnott referred was the ratings of third class L.C.L. and 5th class C.L. provided for these commodities when shipped in bulk in barrels as compared with ratings one class higher in both instances when shipped in metal cans in barrels or boxes. Mr. Sinnott stated:—

“The fact that the new classification provides lower ratings on shoe and stove polish in bulk than on the same articles in boxes or barrels would seem to indicate that the carriers recognize the justice of 3rd class L.C.L. rating and 5th class C.L. rating on shoe and stove polish when offered for shipment in certain packages.”

Mr. Sinnott further alleged that shoe or stove polish whether in glass or tins packed in boxes is much less risky as a shipping commodity than the same articles in bulk in barrels, and contended, therefore, that the ratings when in tin or in glass should be the same as provided for in bulk in barrels. In further support of this position Mr. Sinnott referred to the report of the Interstate Commerce Commission in the matter of *O-So-Ezy Products Company et al v. Director General, et al.*, 85 I.C.C. 187, and read into the record a portion of

the statement found at p. 191. A reading of the whole statement, however, hardly conveys the conclusion adduced by Mr. Sinnott in support of his argument.

Analysis of the pertinent portions of the decision in question shows that the Interstate Commerce Commission did not take the position that in all cases the rating on commodities in packages, in barrels or boxes should be no higher than on the same commodities in bulk, in barrels or boxes, but that it qualified this proposition by the statement that there might be a difference because the relationship in ratings between the two classes is dependent upon other conditions as well. In the Consolidated Freight Classification in effect in the United States there are many items where the rating in bulk in barrels is one class lower than when in inner containers packed in barrels or boxes.

While various exceptions were taken by the representative of the complainant to the rating proposed, the exceptions were so general in character that the Board is not justified on the record in declining to permit the ratings proposed.

With regard to the first class L.C.L. rating on the shoe and stove polish in glass, and also Mr. Sinnott's submission that a carload rating of fifth class should be provided when packed in glass or tin and shipped in barrels or boxes, it should, I think, be pointed out that surely before the Board would be warranted in condemning the classification ratings as proposed the party seeking to have the classification changed should develop his case on the record with completeness and in detail. In this, as well as many other cases, the parties chose to confine their submission largely to statements that are of a general nature, rather than getting down to details and evidence of the character that would go to the root of the matter and enable it to be dealt with both with intelligence and thoroughness.

The opinion was expressed that in comparison with certain other articles the ratings sought would be reasonable, but having in mind that the classification contains but a few classes into which all the many articles must be placed, as to L.C.L. as well as C.L. ratings, an exact refinement of classification is impossible, and unless the number of classes was indefinitely increased there must always be articles in respect to which it will be very difficult to determine into which of two classes they should fall. While Mr. Sinnott did make some general statements as to articles principally food products, in support of the ratings suggested, on the other hand there are other articles in glass rated 1st class L.C.L. and 4th class in C.L.—the same as here proposed—which may or may not be, from the standpoint of the various elements considered in establishing classification ratings, just as analogous to the commodities here in question as those to which reference was given by Mr. Sinnott, e.g., liquid laundry bluing, ink, mucilage, baking or yeast powder, or mixtures for baking or yeast powders, furniture polish, metal polish, adhesive paste N.O.I.B.N., curriers', harness or leather dressing or blacking. However, the Board did not have the benefit of having placed on the record any comparisons as to elements considered in fixing classification ratings, such as value weight, bulk, risk, volume of traffic, character of package, etc., so as to be in a position to form any definite conclusions, and consequently the case was not sufficiently developed to, in my opinion warrant the Board in condemning the proposed ratings. It was not proven that the ratings assigned to these commodities are not warranted in comparison with other articles which might from a classification standpoint be analogous. In other words, an exact refinement of the classification being very difficult, and it being at times a question into which class an article should be placed, is the Board warranted in reaching the conclusion that the 4th class carload rating on these commodities, as at present in effect and as proposed, or the L.C.L. ratings proposed, are improper and unreasonable? I do not consider the matter was sufficiently developed to warrant the Board in so finding.

XXVI

DRIED FRUITS

(Page 135, Items 20 and 22; page 136, Items 1 and 3)

APPLICATION OF CANADIAN WHOLESALE GROCERS' ASSOCIATION
(FILE 33365.13)

No change in the classification ratings is shown in proposed Classification No. 17. Dried or evaporated apples are rated 3rd class L.C.L. and 5th class C.L. The other dried or evaporated fruits, which are principally imported, such as apricots, blackberries, cherries, currants, nectarines, peaches, pears, plums, prunes, raisins, dates and figs are rated, L.C.L., 1st class in glass or earthenware containers packed in barrels or boxes, and 2nd class in bags or in bulk in barrels or boxes; or in fibre or metal cans or cartons in barrels or boxes. The C.L. rating, in all the packages named, is 4th class. The present application is to have the dried fruits last named lowered to 3rd class L.C.L. and 5th class C.L. While it has been held by this Board, as well as by the Interstate Commerce Commission, that the fact that a classification has long existed is persuasive of its reasonableness, at the same time there might be a change in conditions under which the Board would decide that there should be a change in the classification ratings.

The application now before the Board is not new, the same issue having been squarely before the Board in 1913 upon the application of the Toronto Board of Trade, for a reduction of the freight classification ratings on dried fruit, file 19367.8. The judgment of the Board then was that the application should not be granted, this decision being covered by the Board's Order No. 20010, dated August 11, 1913. At that time the case was very fully presented and the decision of the Board was reached after carefully considering all submissions of the applicant. The application at that time was supported by the Dominion Wholesale Grocers' Guild of Montreal, the Ontario Wholesale Grocers' Guild of Hamilton, and the Boards of Trade of Montreal, Winnipeg and Saskatoon; the Edmonton Board of Trade objected and the Calgary Wholesale Grocers desired the present ratings maintained.

It is contended that as compared with 1913 there has been an increase in the consumption of dried fruits and that it presents a larger competition which the jobber did not have to face when the matter was last heard. No evidence as to the latter is submitted. The statements as to increases in consumption were also general.

The Dominion Government statistics of imports of dried fruits into Canada from all countries shows, taking in each instance the year previous to the case being before the Board, in 1912, 62,457,283 pounds as against 66,659,127 pounds in 1923, or an increase of 6 per cent in eleven years, which cannot be said, taking into consideration the increase of population in the same period, to be a very large increase.

It was contended that the relative percentages which freight rates bear to dried fruits are much higher than on other commodities taking second and fourth class rating. Evidence in support of this contention was not adduced.

Mr. Ransom pointed out that these dried fruits were largely imported from the United States and claimed that it would be inconsistent and unreasonable to require the Canadian carriers to classify these United States dried fruits lower than they are classified in the United States where they are produced and where the volume moving is much greater than it will be within Canada for a great many years to come. He filed a comparison with the classification ratings contained in the United States Consolidated Freight classification.

Dried fruits for thirty years have been classified as at present. The question of the reasonableness of these ratings was fully gone into and carefully considered in the 1913 case and the present ratings were confirmed. I do not consider applicants have made out a case on the present record that would justify the Board in modifying or reversing its decision of 1913. The following remarks of the Interstate Commerce Commission in the case of *W. E. Caldwell Co. v. C., I. and L. Ry. Co.*, 20 I.C.C. 418, seem particularly apropos:—

“So long as the thousands of articles offered for transportation are divided into a comparatively small number of classes for rate-making purposes, it is obvious that minute variations in value of different articles, or dissimilar values of the same article, cannot be precisely reflected in the classification. In the absence of evidence that the rate resulting from the classification is unreasonable or otherwise unlawful, it must fairly appear that a particular article is not rated with other articles similar in value, weight and other essential transportation qualities, before the Commission will require a change of classification. In the present case there was no evidence that the rates charged were unreasonable for the service performed, or that they subjected complainant or its traffic to undue discrimination.”

XXVII

CHEWING GUM

(Page 136, Item 14)

COMPLAINT OF WM. WRIGLEY, JR. COMPANY, TORONTO (FILE 33365.4)

The provision in proposed Classification No. 17 for chewing gum is as follows:—

	L.C.L.	C.L.
Gum, chewing—		
In glass packed in barrels or boxes, O.R.B.....	1	..
In boxes or cartons in barrels or boxes.....	2	..
In packages named, C.L. minimum weight 24,000 lbs.....		4

No change in the classification of this commodity is proposed and the present and proposed ratings have been in effect since 1902. Previous to that time there was only a rating of first class on gum in packages, any quantity. Complainants contention is that they should have a rating of 2nd class L.C.L. on chewing gum shipped in glass, packed in barrels or boxes. They are not applying for a reduction in the L. C. L. rating when shipped in boxes or cartons in barrels or boxes. Complainants described in considerable detail their method of packing this commodity when shipped in glass, contending it was a superior package to many similar containers offered for transportation and equally as good and desirable a package as when shipped in cartons or boxes, thus entitling them to the same rating. They also expressed the opinion that inasmuch as gum in glass or cartons takes the same rating in carloads, the same rating should be applicable to L. C. L. shipments of the same commodity.

They alleged their commodity, as they pack it in glass for shipment, is equal to and superior to many other packages being handled by the carriers at 2nd class ratings, such as butter colouring, cheese, chloride of lime, prepared cocoanut, ground coffee, cleaning and sweeping compounds, dessert preparations, fish, meats, milk, etc. With regard to the articles just named, there is obviously no particular similarity, nor reason why the rating on any of the articles named should determine the rating on chewing gum from the standpoint of discrimination, because there is absolutely no competition between

chewing gum and the other articles. It may be also stated that with regard to practically all the articles named by complainants no change in ratings from those at present in effect are being proposed; further shipments of said commodities in glass are rated one class higher L. C. L. than when packed in wood, metal or fibre containers, or in other words, there is the same distinction as between the glass and other containers as in the case of chewing gum. The general principle of the proposed classification—although there are exceptions—is that with respect to commodities shipped in glass they are rated one class higher, L. C. L., than the same article when packed in fibre, wood or metal containers. This is more fully commented upon in Section XXV herein dealing with shoe dressing and stove polish.

In accordance with long standing and usual practice the same ratings are applied on all these commodities in carloads whether in glass, fibre, wood or metal containers, which is perhaps explained in a measure by the relatively smaller hazard in handling carload than in handling less than carload shipments. It may be noted that so far as the Official and Western Classifications, in effect in the United States, are concerned, they make the same distinction as in Canada with respect to L. C. L. shipments of chewing gum, that is to say, the glass container is rated 1st class L. C. L., and the cartons or boxes 2nd class L. C. L. In those classifications all the packages named are rated 3rd class in carloads, as compared with 4th class in the Canadian Classification. In the Southern Classification a 2nd class rating applies in whatever container shipped or whether shipped in carload or L. C. L. quantities. The situation in the United States classification, is, generally speaking, the same as that in Canada, viz.: glass containers take a rating one or two classes higher than the fibre or metal container, and all these containers take the same carload rating.

In *Indian Packing Corporation V. Director General*, as Agent, Ann Arbor Railroad Company, *et al*, decided November 3, 1924, in 93 I.C.C. 400, there was before the Interstate Commerce Commission complaints from corporations and associations of packers of food products in glass containers, also manufacturers of glass containers, throughout the territory covered by the Official Classification, in which complainants asked for the same L. C. L. rating on shipments of numerous commodities in glass packed in barrels or boxes, as provided when shipped in metal cans packed in barrels or boxes. The changes applied for by complainants were not granted, the decision of the Interstate Commerce Commission being that the articles described "when in glass, packed in barrels or boxes are and for the future will be unreasonable to the extent that they are or may be higher than the first numbered class above the less than carload ratings contemporaneously applicable to the same articles when in metal cans, packed in barrels or boxes."

Complainant admitted that the reduction in rating sought would not be of any benefit with regard to a good many of their shipments in glass by reason of the application of the minimum charge or smalls rule. According to their submission, the reduction would only effect a small percentage of their total shipments.

Complainants did not adduce evidence indicating that the rating on shipments in glass was unreasonable *per se*, or subjected the commodity to an unreasonable toll, and nothing that was submitted furnished any justification, in my opinion, for reducing the present rating, which has been in effect since 1902. The record does not establish that the rating on shipments in cartons, metal or wood afford a proper measure of the reasonableness of the rating on shipments in glass. I do not consider complainants have made out a case warranting any direction to change the classification ratings that are at present in effect and continued in Classification No. 17.

XXVIII

FRUIT JAR RINGS, RUBBER

(Page 137, Item 9)

APPLICATION OF CANADIAN WHOLESALE GROCERS' ASSOCIATION (FILE 33365.13)

At the present time there is no specific item providing for rubber fruit jar rings, and item 12 on p. 122 of Classification No. 16 covering rubber articles, N.O.S., in packages, at rating of 1st class L.C.L., is applicable. In proposed Classification No. 17 a rating when shipped in boxes of 2nd class L.C.L. and 4th class C.L., minimum weight 30,000 pounds, is provided for. This is a reduction of one class with respect to L.C.L. shipments and three classes for carloads. The carload rating is the same as provided for other rubber articles under the "Rubber and Rubber Goods" list in proposed Classification No. 17, such as belting, heels or soles, horseshoe pads, hose, mats and matting, stair treads, rubber tile, etc. The application of the Canadian Wholesale Grocers' Association is that these rubber fruit jar rings should be given a carload rating of 5th class, with the object, presumably, of enabling the mixture of rubber fruit jar rings at that rating with other 5th class articles in mixed grocery cars. Applicants stated that fruit jars and metal fruit jar rings are rated 5th class C.L. and as each fruit jar is equipped with a rubber ring it is their contention that the latter should also take the same rating in carloads. No submission was made by applicants with respect to the L.C.L. rating which on fruit jars is 3rd class and on the metal rings 2nd. Applicants did not adduce any evidence whatever to show, from a classification standpoint, what analogy, if any, there is between rubber fruit jar rings and the fruit jars themselves from the point of value and other relevant factors that would ordinarily be given weight in arriving at classification ratings. No mention whatever of values was made. Mr. Ransom stated that the ratings proposed were agreed to by the rubber manufacturers and were, he alleged, consistent as compared with ratings on other rubber articles and that this was a case where the grocery trade wanted the 5th class carload rating solely for the purpose of enabling the mixing of a small quantity of rubber fruit jar rings with 5th class mixed grocery carloads. It was pointed out by Mr. Ransom that when shipping fruit jars the rubber ring is included as a part of the jar, and it is only the shipment separately of solid rubber rings in boxes that is involved in this application.

It may be here pointed out that to ignore the rating properly and reasonably applicable to an article considered by itself, and to provide a lower rating than would thereby be established on its own merits solely to permit the mixing privilege, would do violence to one of the most important principles of classification making, always hitherto held to be proper and consistent. To lower a rating, which is reasonable *per se*, for such a reason, would inevitably lead to the requirement that all articles which shippers' convenience would suggest be shipped together should be given the same rating. Such a principle would be obviously unsound and absolutely demoralize and disrupt the structure of the classification. For this application to succeed it would be necessary for the applicants to make out a case that the ratings on these articles are in themselves unreasonable; not merely that it is the desire of applicants to have a reduced rating provided simply for mixing purposes. Applicants not having met the burden of showing that the proposed ratings (which are a substantial reduction from those now in effect) are unreasonable, the Board would not be justified in directing that any change be made in what is proposed.

XXIX

MACARONI, NOODLES, SPAGHETTI AND VERMICELLI

(Page 137, Item 20)

APPLICATION OF THE CANADIAN MACARONI MANUFACTURERS' ASSOCIATION
(FILE 33365.9)

No change in ratings is proposed in Classification No. 17 from those at present provided in Classification No. 16 (shown below), but application is made by the Canadian Macaroni Manufacturers' Association for a reduction in rating to 4th class L.C.L. and 8th class C.L. with carload minimum weight of 30,000 pounds.

Prior to 1912 provision was made in the Canadian Freight Classification for macaroni, spaghetti and vermicelli at ratings of 2nd class, L.C.L., and 4th class, C.L. Under date of August 17, 1911, the Montreal Board of Trade applied to the Board for an order directing the railways to amend the classification by reducing the ratings on these articles to 4th class L.C.L. and 5th class C.L. Subsequently, the railway companies agreed to make, and the applicants agreed to accept, a reduction in the carload rating from 4th to 5th class, with no change in the L.C.L. rating, and the Board's Order No. 15635, dated November 21, 1911, ordered that a supplement to the Classification legalizing this arrangement be made effective not later than January 15, 1912. Later, effective June 26, 1922, in Supplement No. 19 to Classification No. 16, a reduction was made in the L.C.L. rating, and the present item, No. 2 on p. 7 of Supplement to the Classification referred to, reads as follows:—

	L.C.L.	C.L.
Macaroni, Noodles, Spaghetti or Vermicelli—		
In single bags.....	2	5
In double bags.....	3	5
In barrels or boxes.....	3	5

With respect to the further reduction in ratings now applied for, the application is based largely on the following grounds:—

1. That reduction in ratings should be made to enable the Canadian Manufacturers to meet competitive conditions, i.e., foreign importations;

2. That these articles compare favourably as to weight, bulk and value with certain cereal products, and are also a cereal food product, consequently should have ratings as low as provided for those cereal foods which are rated 4th class L.C.L. and 8th class C.L.

So far as relates to that phase of applicant's argument dealing with reduced ratings to meet foreign competition, the evidence adduced by applicants dealing with competitive conditions was not of a nature that would warrant any direction by the Board. The evidence as to importations consisted largely of general statements, although the competition of Buffalo and Minneapolis was specifically referred to. With regard to Buffalo, shipments to Toronto were alluded to. By reason of the Official Classification governing on the international movement, which provides a lower L.C.L. rating than contained in the Canadian Classification, it was stated that to Toronto the rate from Buffalo was lower than from St. Catharines, there being two manufacturers of macaroni products at the point last named, the imported product from Buffalo passing by their doors at the lower rate, the difference being 3 cents per 100 pounds. Mr. Ransom, for the Canadian Freight Association, stated, and his evidence was uncontradicted, that some time ago they advised applicants they would investigate the rate situation and if they found a competitive condition that was reacting detrimentally to the Canadian manufacturer a commodity rate to meet the Buffalo competition would, if necessary, be established;

that their investigation developed the total shipments from Buffalo into Canada amounted to from 1,500 to 2,000 pounds every four months, or an approximate average of not more than 6,000 pounds per year. There is also a manufacturer in Toronto whose production is small.

So far as relates to Minneapolis, applicants simply made the general statement that there were large macaroni manufacturers at that point who shipped into Western Canada, but no details as to volume of the traffic were given by applicants, Mr. Ransom stated in substance (pp. 9598-99), that investigation had been made of the movements from Minneapolis into Winnipeg and that in one year this had amounted to eight carloads. It is also stated that the eight carloads in question carried a brand of "Mothers' Macaroni," which was advertised largely in the Winnipeg territory and sells for a higher price than the Canadian macaroni.

It may be further noted that the distance from Minneapolis to Winnipeg is, of course, much less than from Eastern Canada, and also that from Minneapolis to western Canadian points the Canadian Classification applies, so that any reduction made in the ratings in the Canadian Classification would apply equally from Minneapolis and Eastern Canada, and therefore competing manufacturers would be in just the same relative position from a classification standpoint as they are to-day.

Applicants further cited, dealing with competition and importation, figures of the Dominion Bureau of Statistics for imported macaroni and vermicelli for twelve months ending March, 1922, 1923 and 1924, which showed that there had been an increase in the imports. However, taking the figures as to importations over a period of years, they are very inconclusive. Below are the importations for fiscal years ending March 31, as noted:—

IMPORTATIONS OF MACARONI AND VERMICELLI
(Fiscal years ending March 31st)

Years	Pounds	Years	Pounds
1909.....	3,874,345	1917.....	1,973,272
1910.....	4,597,129	1918.....	1,067,255
1911.....	5,355,769	1919.....	115,272
1912.....	6,257,035	1920.....	949,960
1913.....	8,033,873	1921.....	911,004
1914.....	10,543,569	1922.....	1,096,752
1915.....	6,701,681	1923.....	1,249,498
1916.....	2,564,933	1924.....	1,626,014

The effect of classification ratings on these fluctuating figures of importation is not apparent. The figures as to importation are also inconclusive for the reason that no figures were put in showing the volume of the total production of Canadian manufacturers, so that no comparison can be made as between the volume of the importations and the volume of the products of the Canadian manufacturers.

The cereal products, with which comparison is made, are rated 4th class, L.C.L., and 8th class C.L. It is contended by the complainants that there is similarity between these products and macaroni from the standpoint of packing, value and weight. On the other hand, there is a much larger tonnage of cereal products. The ratings on these are low and there is no real competition between Macaroni and these commodities.

Applicants referred to a decision of the Interstate Commerce Commission in *Sycamore Manufacturing Company v. Director-General, et al*, 81 I.C.C. 108, and stated in that particular case the Interstate Commerce Commission found that the rate on macaroni in carloads were unreasonable. On referring to

this case, however, and reading the whole decision, I do not see wherein it supports applicants' contention that macaroni products should take the same ratings as the cereal food preparations, as the Interstate Commerce Commission, in the decision in question, while directing, as stated by applicants, a reduction in the rates on macaroni products, held that macaroni products were not entitled to the same rates as cereal food preparations and the rates they directed were higher. Reference may also be made to *National Association of Macaroni and Noodle Manufacturers of America v. Alabama Great Southern Railway Company, et al*, 50 I.C.C. 289. In this case the complainants applied for the same rates on macaroni products as on cereal foods. The Interstate Commerce Commission found the rates on macaroni products were not shown to be unreasonable and the complaint was dismissed.

The ratings on macaroni products proposed in Classification No. 17 and which are a continuance of those now provided in Classification No. 16, may be approved.

XXX

L.C.L. RATINGS ON SALT, COMMON

(Page 140, Item 19)

COMPLAINT OF CANADIAN WHOLESALE GROCERS' ASSOCIATION. (FILE 33365.13)

The submission of Mr. Balfour, representing the Canadian Wholesale Grocers' Association, was as follows:—

"We request that salt in bags, in barrels should be carried at the same class as salt loose in barrels, namely at fourth-class L.C.L. rating, the same as it is carried to-day. We also request that a fifth-class rating be given on salt with a minimum of 24,000 pounds."

So far as relates to the L.C.L. rating, Mr. Balfour again, at p. 9673, stated:—

"I asked that salt in bags when packed in barrels be carried at 4th class the same as it is now."

There is a misunderstanding on the part of applicants here as there is no change being proposed in the L.C.L. ratings on salt. In Classification No. 16, effective March 1, 1913, it was provided on p. 93, item 78, that salt "in small bags or boxes" would be rated 3rd class L.C.L., a rating of 4th class being also shown for salt "in sacks or barrels." This was a provision carried forward from previous classifications and one that had been effective for many years previous to 1913. In Supplement No. 5 to Classification No. 16, effective November 1, 1915, these shipping descriptions were changed to read:—

	L.C.L.
In bags, packed in barrels or boxes.....	3
In bulk, in bags or barrels.....	4

In submitting this change in phraseology to the Board at that time, the Canadian Freight Association stated that the purpose of same was to clarify the shipping descriptions, there having been in some instances a misinterpretation placed thereon inasmuch as the description "in sacks or barrels" was intended to cover shipments in bulk in sacks or barrels and not the small 5- and 10-pound sacks that were packed in barrels. Proof of Supplement No. 5 was sent to the various trade organizations and public bodies and there was no exception then taken to this change in wording, which was merely in the nature of clarifying the item rather than any suggestion of an increase in the rating. The next change was in Supplement No. 12 to Classification No. 16, effective July 21,

1919, when the shipping description "in bags packed in barrels or boxes" was changed to read: "In cloth pockets in bags, barrels or boxes," but without any change in the rating, and this latter description is that now in effect as well as what is proposed in Classification No. 17, so that the misunderstanding on the part of Mr. Balfour will be obvious. The salt shipped in bulk in bags or barrels is rated one class lower L.C.L., or 4th class, and the justification given by Chairman Ransom, of the Canadian Freight Association, for the distinction is that one is table salt and the other a commercial salt, live stock salt or for freezing purposes, being a different class of salt and of a lower value. It would appear from a price list of the Canadian Salt Company, filed by Mr. Balfour, and without deducting the trade discounts, that the table salt in the small bags or pockets ranges from \$3.75 to \$5.50 per barrel as compared with fine salt in bulk in barrels at \$1.75 per barrel and the coarse salt at \$2.05, while what is described as factory filled dairy cheese and special butter salt ranges from \$3 to \$3.90 per barrel. Mr. Balfour's submission was based on a misunderstanding and the Board would not be warranted from the meagre record here in condemning the L.C.L. ratings that have been in effect for a great many years past. If it is the allegation of applicants that there is some discrimination or inconsistency, then the matter should be more fully developed through the means of a subsequent formal application.

The question of minimum carload weight has been dealt with along with other similar items in section XXIV.

XXXI

TOBACCO, PLUG OR TWIST

(Page 143, Item 26)

APPLICATION OF CANADIAN WHOLESALE GROCERS' ASSOCIATION
(FILE 33365.13)

The present and proposed ratings on plug tobacco are as follows:—

Classification No. 16			Classification No. 17		
	L.C.L.	C.L.		L.C.L.	C.L.
Tobacco, Plug, in caddies or butts—			Plug or Twist—		
Loose.....	D-1	4	In butts or caddies, weighing not less than 10 lbs. each, loose.....	1	..
Two or more crated or securely fastened together.....	3	5	In butts or caddies, two or more in crates or cleated or strapped together.....	3	..
			In packages, in boxes.....	3	..
			In packages named, C.L., minimum weight 24,000 lbs.....	..	5

The application of the Canadian Wholesale Grocers' Association is for a rating of 3rd class L.C.L., instead of 1st class, on this plug or twist tobacco in butts or caddies weighing not less than 10 pounds each, loose.

At the present time the rating in this shipping condition is D-1 and reduction to 1st is proposed. While Mr. Balfour stated they had understood a 3rd-class rating would be provided for, Mr. Ransom stated the record of their Classification Committee clearly showed that a rating of 1st class was requested and finally agreed to by the Classification Committee. Mr. Ransom further stated that the carriers would perhaps bring up separately at a later date the question of a revision of classification of tobacco and contended that the change

as shown in proposed Classification No. 17 should stand in the meantime. As to whether the rating in this particular shipping condition is right or wrong, this was not argued by Mr. Ransom.

In proposed Classification No. 17 the carriers have already made some changes in the ratings on tobacco, e.g., a reduction in the carload rating on chewing and smoking tobacco, cut or granulated, in pails, two or more in crates cleated or strapped together; also in the current C.L. rating on plug tobacco in caddies, loose; as well as the reduction in the L.C.L. rating already referred to. In view of this, and also that there is nothing definite before the Board in the matter of a later application for a revision of classification, I see no reason why the less than carload rating that is here in controversy should not be now dealt with on its merits as indicated on the record here before the Board.

Mr. Balfour pointed out that under the proposed classification provision two small boxes of tobacco weighing $2\frac{1}{2}$ pounds each could be nailed or cleated together and shipped at 3rd class rating L.C.L. while if a single 20 pounds caddy of tobacco were shipped the rating to-day would be D-1, and as proposed 1st class. He contended a single caddy under such circumstances offered a far better package for transportation than the two light caddies cleated or nailed together. and it is not apparent that there is any good argument against this contention, at least there is none on the record. While it may be fairly stated that this apparent inconsistency has existed for a good many years, that would appear to be because the issue has not been previously raised and does not constitute, in itself, any valid reason for the continuance of an anomalous situation when squarely before the Board on the present record. The provision for plug or twist tobacco in butts or caddies weighing not less than 10 pounds each, loose, should be changed from 1st to 3rd class, L.C.L.

XXXII

ASPHALT SHINGLES AND ROOFING

(Page 146, Item 9; Page 155, Item 37)

COMPLAINT OF TORONTO ASPHALT ROOFING MANUFACTURING COMPANY, LIMITED,
MOUNT DENNIS, ONT., RE INCREASE IN MINIMUM CARLOAD WEIGHT.
(FILE 33365.18)

No change is proposed in the ratings on asphalt shingles or roofing and the complaint is not against the ratings but is with respect to the proposal to revise the carload minimum weight from 24,000 to 30,000 pounds. The physical minimum, or, in other words, the weight representing the quantity which can be loaded into a standard car from the point of view of space, or the theoretical number of packages capable of being loaded into a standard car, determined by dividing the cubical contents of the car by the cubical contents of one of the packages, multiplied by the weight of the package, is not here in question. Complainants stated that a package of asphalt shingles weighing 200 pounds would occupy three cubic feet of space, so that taking the standard car of 2,448 cubic feet the physical minimum, making some allowance for possible unfilled space owing to the dimensions of the package, would be somewhere around 150,000 pounds per car, based on complainants' figures. What is involved, therefore, is the question of the commercial minimum, viz., that minimum which takes into consideration trade requirements, conditions of manufacture, distribution and consumption. Complainants stated that their average load was around 30,000 pounds. It was readily admitted by complainants that the larger points

could easily take the proposed minimum weight, or more, but the complaint was based very largely on the ground that it was alleged it would deprive complainants of the privilege of shipping in carloads to the village communities that now with difficulty handle a 24,000 pounds car during the roofing season. In effect, therefore, this is a request that the Board direct the carriers to establish a carload minimum weight based solely on the quantity that complainants can ship at one time to the small community, disregarding entirely the minimum that can be readily shipped to the larger points, and all other considerations that are ordinarily weighed in arriving at a conclusion as to fixation of a fair and reasonable minimum carload weight. Classification is, of necessity, a matter of averaging. Whatever minimum weight is fixed, there will be cases where there will be difficulty in making up that weight. The principle that is really involved here has already been dealt with by the Board.

The Board has held that a railway cannot reasonably be required by regulative tribunals to fix a minimum based on the fact that the business is such that it takes a season or more to dispose of a car of brick.

Western Retail Merchants' Assn. vs. C.P.R., 20 Can. Ry. Cas., 155.

"Trade conditions are not necessarily conclusive in connection with minima."

Dominion Millers' Assn., Toronto Board of Trade and Montreal Corn Exchange vs. Can. Frt. Assn., 21 Can. Ry. Cas., 83, at p. 87.

The evidence given by complainants as to the number of cars shipped at 24,000 lbs. minimum and the proportion of these to its total output was very indefinite, consisting largely of general statements.

There is a large tonnage of the commodities here involved and there has been no objection or complaint as to the revision of minimum weight from any other interested shipper. Mr. Ransom, for the Canadian Freight Association, stated their Special Classification Committee had met various roofing manufacturers and discussed this matter quite thoroughly, and they had agreed to the revision in question. Obviously, all manufacturers are on an absolute equality and there is not here the situation that the complainants are required to load any greater minimum weight than any other competing manufacturer.

It appears from the record that complainants desire special consideration on the ground that they are a comparatively new industry competing with older established competitors whose goods are perhaps better known and advertised, with the result that complainants have more difficulty than their competitors in loading the carload minimum weight to village communities, although they stated they had no trouble of this kind in the cities. This feature of the matter is outside the powers of the Board.

Complainants also stated that in consideration of the present minimum carload weight on their outward product being continued they would be willing to make a sacrifice with respect to the minimum carload weight on their inbound material. However, upon being questioned as to the weights of their incoming material it developed from their statement that they are now loading such cars up to practically their weight carrying capacity, so that this suggestion has no real force or meaning even if it were a factor to be properly considered in connection with the establishment of minimum carload weight on the outward product.

There was also the suggestion that the revision in the minimum carload weight might involve an increased cost to the consumer, but on the record as developed it is not at all clear that any such result will follow.

Having in view that the average loading of complainants' shipments is 30,000 pounds; that this is so much less than the physical loading capacity of the car; that in the revision of the Classification there has been a corresponding increase in the minimum carload weight on other roofing materials competitive with the asphalt roofing, I consider the revised minimum weight is a reasonable commercial minimum and should be approved.

XXXIII

MINIMUM CARLOAD WEIGHT ON BARBED WIRE

(Page 160, Item 22)

COMPLAINT OF THE UNITED GRAIN GROWERS, LIMITED, WINNIPEG.

(FILE 33365. GEN.)

The ratings on barbed wire are not being changed but it is proposed in Classification No. 17 to raise the minimum carload weight from 24,000 to 36,000 pounds. Mr. Stimpson, representing the United Grain Growers, objected to this, alleging that the proposed minimum carload weight would represent a quantity in excess of what could be ordinarily purchased at one time by retailers and co-operative associations operating in the smaller communities and they might be thereby forced to purchase from the nearest distributing centre in L.C.L. quantities. Mr. Stimpson does not contend that the proposed minimum is unreasonable from the commercial standpoint in all cases, because he stated that the shipments into Winnipeg would run from 36,000 to 60,000 pounds, and that the average loading would be around 40,000 to 45,000 pounds. Mr. Ransom, for the Canadian Freight Association, submitted that so far as the physical loading of cars was concerned a weight twice that proposed could be carried easily, and that in fixing the minimum at 36,000 pounds the carriers felt they had given due consideration to the question of a reasonable commercial minimum. The situation appears to be, therefore, that there is no difficulty in loading the proposed minimum, or considerably more, to the larger centres, but it is at times difficult to load the proposed minimum weight to the smaller destination points. Unfortunately, the matter was not very fully developed on the record so that there is no information before the Board showing the general average loading of this traffic; the proportion which moves to the distributing centres as compared with direct shipments to ultimate destinations; or what the average weight has been with respect to shipments of the character last named. The proposed minimum weight on barbed wire is in line with that which has been fixed for other plain, coppered, galvanized or tinned wire, as well as other commodities which, from a classification standpoint, would appear analogous. What is stated in connection with the minimum weight on asphalt shingles and roofing in Sec. XXXII is also very pertinent to what is here involved. What is proposed may be approved subject to the right of the complainants to bring the matter up as a separate issue, if desired, when it can be much more fully developed than on the present record.

XXXIV

RATINGS ON FOREIGN WINES

(Page 174, Item 30)

APPLICATION OF MR. DE ROUSAY DE SALES, CONSULAR AGENT FOR FRANCE, CALGARY,
ALTA. (FILE 33365. GEN.)

At the Calgary sittings of the Board on July 7, 1924, some submissions were made by Mr. de Rousay de Sales, Consular Agent for France, with respect to the Classification of imported French wines. The matter came on without prior written submissions or notice and was not sufficiently developed to enable any action to be taken on what was then submitted to the Board. Mr. Ransom, for the Canadian Freight Association, stated he had no knowledge of the application coming up and that in conference with Mr. de Rousay de Sales he understood that the question was to be left to the Consul-General for France at Montreal to deal with the carriers, which Mr. de Rousay de Sales confirmed. There has been nothing subsequently before the Board from the Consul-General at Montreal or from Mr. Ransom. Subsequently, at Winnipeg on 20th November there was heard by the Board the application of the Manitoba Government Liquor Control Commission *et al* for a modification of the existing ratings on liquors, as well as those proposed in Classification No. 17, which, I take it, would have included the foreign wines. This application was refused by the Board by Order No. 35865, dated 9th December, 1924. There are no ratings being increased in proposed Classification No. 17, the only change being reduction from D-1 to 1½ T-1 L.C.L. with respect to foreign wines in bulk in barrels.

XXXV

MINIMUM CARLOAD WEIGHT ON LUMBER

(Page 178, Items 2 and 4)

COMPLAINT OF THE WESTERN RETAIL LUMBERMEN'S ASSOCIATION, PER MR. H. H. SHIELS. (FILE 33365. GEN.)

At the Winnipeg sittings Mr. H. H. Shiels, representing the Western Retail Lumbermen's Association, complained of the advance in minimum carload weight on lumber from 30,000 to 36,000 pounds. The general movement of lumber is under special commodity tariffs at minimum weights in excess of those provided for in the Classification. The movements here concerned that would be affected by the change in the classification minimum cover shipments between retail lumber yards at prairie points. According to Mr. Shiels' submission there is more or less distribution between these yards, and the proposed minimum of 36,000 pounds is considerably in excess of the weight of such average shipment. As presented, there is not here involved the question of physical minimum, but purely that of the commercial minimum, and the latter not with respect to movements generally, but the much smaller volume of inter-yard movement. It is stated these shipments run from 18,000 pounds up. Mr. Shiels stated he was not in a position to say how many cars per annum would be covered by this inter-yard movement. Mr. Ransom for the Canadian Freight Association, contended that inasmuch as lumber is a commodity that does not deteriorate to any extent if stored it would be no hardship upon the yards to take two or three thousand feet extra of lumber,

which would represent the increase in the minimum weight, and if the carriers were to establish carload minimum weights to meet the smallest commercial demand in the final analysis react to the detriment of the public at large, as public interest is best served by the economy in transportation cost that results from heavier loading of cars.

The issue here is substantially on all fours with that raised in the case of the minimum carload weights on asphalt shingles and roofing (section XXXII) and for reasons more fully referred to therein I do not consider any change in the proposed minimum carload weight should be directed.

XXXVI

MACHINERY AND MACHINES

(Page 178, Note 3)

COMPLAINT OF THE DODGE MANUFACTURING CO., LTD., TORONTO, *et al* (FILE 33365.35)

The Dodge Manufacturing Company of Canada, Limited, of Toronto, filed written submissions under date of May 22, 1924, complaining of the provisions of proposed Classification No. 17 which made the rating on power transmission machinery in 5th class in C.L., while with certain other machinery classified 6th class C.L. many articles detailed under the heading of power transmission machinery, could be included at the C.L. rating applicable on such machinery, under the provisions of note 3, page 178. They contended that a classification provision under which they were compelled to ship their power transmission machinery at 5th class C.L., while other manufacturers had the privilege of including articles of power transmission with their machines at 6th class C.L., was an undue discrimination against them.

There was a further letter from the Dodge Manufacturing Company under date of May 23 in which they referred to elevating and conveying machinery covered by Items 14 and 34 on page 183, rated 5th class C.L., and with respect to which they maintained a 6th class rating should be provided and applied to be given a hearing when the subject of proposed Classification No. 17 was listed for hearing by the Board. In this connection it may be stated that although notified of the Board's sittings, no further representations were made to the Board and it may be that the complaint should be considered withdrawn. In any event, the matter was not developed in any way, so that no expression of opinion could be here made on the merits of the case.

Under date of September 30, 1924, Chairman Ransom, of the Canadian Freight Association, filed with the Board proposed Supplement No. 1 to proposed Canadian Freight Classification No. 17, which provided for reduction from 5th to 6th class in the carload rating on certain articles of machinery and the elimination in connection therewith, also other items rated 6th class, of all reference to Note 3 on page 178. There is quoted below Mr. Ransom's letter setting out the explanation for the change made and indicating the publicity given to the matter:—

"I enclose herewith three copies of proposed Supplement One to proposed Canadian Freight Classification No. 17, which was filed with the Board on April 9, 1924. This supplement, you will observe, deals solely with items listed under the distinctive heading of 'Machinery and Machines.' When Classification No. 17 was prepared, the carload ratings proposed for all of the machines named in this Supplement was 5th class and by reference to Note 3, Item 25, page 178, it was permissible to include in the car all of the articles named in Note 3 at the 5th class rating as proposed on the machinery.

"Just before filing the classification with the Board, the C.L. rating on saw-mill and wood-working machinery, as covered by item 32, page 189, and item 2, page 190, were reduced to 6th class. After the proposed Classification was filed with the Board, the manufacturers of certain kinds of machinery objected to the increase from 6th to 5th class in the carload rating and at a conference between the manufacturers and our Committee held in Montreal, the manufacturers stated that while they were agreeable to an increase in the carload minimum weight on some of the machinery, they protested vigorously against any advance in the existing carload ratings. The Committee finally agreed to continue the present 6th class C.L. ratings on the items of machinery referred to. At this conference note 3 on page 178 of proposed Classification was entirely overlooked by our Committee and no reference was made to it in our discussions with the manufacturers.

"As practically all of the articles in note 3 have, for years past, been classified at 5th class and are classified separately as 5th class in the proposed classification, we find it necessary to ask the Board for consideration of this Supplement in connection with proposed Classification No. 17.

"As it was through an error or oversight on the part of our committee that this matter was not discussed with the manufacturers of machinery, we assume there will be no objection on their part to the changes proposed as all that they asked for at the conference was that the present carload ratings be continued.

"I am also enclosing a copy of letter to the King's Printer requesting publication of notice in the *Canada Gazette* as required under section 322 of the Railway Act, 1919, in accordance with General Order of the Board, No. 271, September 10, 1919.

"Copies of the proposed supplement with copies of request to the King's Printer, for publication in the *Canada Gazette*, have been mailed to all parties named in section 5 of the Board's General Order No. 271 (also to other parties to whom the Board have requested that such information be furnished) with request that their objections, if any, be filed with the Board within the next thirty days.

"I have also sent a copy of this letter to Mr. S. B. Brown of the Canadian Manufacturers' Association, Toronto, Mr. T. Marshall, Traffic Officer of the Board of Trade, Toronto, and Mr. J. K. Smith, Traffic Officer of the Board of Trade, Montreal, who were present at our conference with the machinery manufacturers when this matter was discussed, also to Mr. Geo. Carpenter of the Canadian Manufacturers' Association, Winnipeg, Mr. J. H. Hanna, of Calgary, representing the Province of Alberta, Mr. W. S. McClintock of Vancouver, representing the province of British Columbia, also Mr. Alex. McDonald representing the province of Saskatchewan.

"In view of the conditions as stated herein, we trust the Board can consistently deal with the changes proposed in this Supplement at the time they hear further exceptions to proposed Classification No. 17."

Subsequently there were submissions made to the Board in this regard in letters from the A. R. Williams Machinery Company, Limited, Toronto, dated October 8; the Canadian Laundry Machinery Company, Limited, Toronto, dated October 16; the Brown Boggs Company, Limited, Hamilton, dated October 21; and the Watrous Engine Works, Limited, Brantford, dated October 30. There is on file with the Board copies of replies made by Chairman Ransom direct to the firms named, in which he pointed out that no change was contemplated in the current ratings on this class of machinery, and the

mixed carload arrangement will be the same as that which has prevailed in the past. Following Chairman Ransom's letters of explanation to the firms in question no further submissions were made by them to the Board nor were any of the companies directly represented at the Ottawa sittings. At the Ottawa sittings, however, Mr. Brown, of the Canadian Manufacturers' Association, stated he did not expect there would be anyone appearing before the Board on this complaint for the reason that the changes contained in proposed Supplement No. 1 to proposed Classification No. 17 met the complaint of the Dodge Manufacturing Company and that he understood explanations made to the other firms had met their objections.

While there is no formal withdrawal on the record from any of the firms named, in view of their making no further submission subsequent to Chairman Ransom's letter of explanation to them, and not appearing, although notified, at the hearing, and what was stated by Mr. Brown, the changes contained in proposed Supplement No. 1 to proposed Classification No. 17, may be approved without prejudice to the rights of any party to at any time make any further desired submissions in connection with what is here concerned.

XXXVII

PACKING CUSHIONS OR MATS, EXCELSIOR

(Page 205, Items 5 and 6)

COMPLAINT OF THE BOXBOARD PRODUCTS, LIMITED, LONDON, ONT.

(FILE 33365.21)

The complaints were not represented at the hearing. In their written submission, dated May 7, 1924, objection was taken to the proposed change in the classification of excelsior packing cushions or mats from 5th class C.L., minimum weight 20,000 pounds, as at present, to 3rd class C.L., minimum weight 12,000 pounds, for the reason that this would prevent their mixture at 5th-class carload rating with egg-case or egg-carrier fillers. The complainants' products consist of egg-case fillers, egg-case flats and egg-case excelsior pads. Mr. Ransom, of the Canadian Freight Association, stated the Classification Committee had considered this complaint and agreed to add the following item in Classification No. 17:

"Egg-Case Fillers and Flats, K.D., packed in egg cases or in bundles, in mixed carloads with excelsior cushions or pads, C.L., min. wt. 24,000 pounds, subject to Rule 7.... 5"

He stated this would result in the complainant obtaining the same rating and carload minimum weight, not only in eastern Canada, but to points west of Fort Arthur also, as he is receiving to-day, although the present mixture is confined to points east of Port Arthur. The provision for straight carloads is to remain as proposed, as to the manufacturers shipping in straight carloads it means a reduction. Mr. Ransom stated the foregoing arrangement was satisfactory to complainant. This has not been confirmed by any advice to the Board from complainant but it is assumed the matter may be considered disposed of and the proposed additional item as above quoted may be approved.

XXXVIII

PLUMBERS' GOODS

(Page 214, Item 56, to page 217, Item 36, inclusive)

APPLICATION OF AMHERST FOUNDRY CO., LTD., AMHERST, N.S., FOR AMENDMENT TO
 PERMIT THE SHIPMENT OF MIXED CARLOADS TO POINTS WEST OF
 PORT ARTHUR, ONT.

(FILE 19367.6)

The rule of the classification, both present and proposed, with respect to the shipment of different articles in mixed carloads, is that between shipping points east of Port Arthur and Armstrong, Ont., when a number of different articles for which carload ratings are provided are shipped at one time by one consignor to one consignee and destination in a carload, they will be charged at the carload rating applying to the highest classed article in the carload. Between points west of and including Port Arthur and Armstrong, Ont., also from points east thereof to Port Arthur and Armstrong and points west thereof, and vice versa; articles are not taken in mixed carloads at carload ratings unless classified under distinctive headings, which are shown in the classification in capital letters, as—"AGRICULTURAL IMPLEMENTS," "GROCERIES," "HARDWARE," etc. When a number of different articles under one distinctive heading, for which carload ratings are provided, are shipped at one time by one consignor to one consignee and destination in a carload, they are charged at carload rate applicable to the highest classed article.

What is here involved—the classification of Plumbers' Goods—is not the matter of the ratings themselves, nor the question of mixed carloads between points east of Port Arthur and Armstrong, Ont., but concerns mixed carloads from points east of Port Arthur and Armstrong to points west thereof, which are not permissible either under Classification No. 16 as at present in effect or as proposed in Classification No. 17, for the reason that the plumbers' goods are not shown in capital letters as one of the distinctive headings.

Prior to the issuance of Canadian Freight Classification No. 16 there was a distinctive heading of Plumbers' Supplies provided for, which permitted mixed carload shipments from eastern to western Canada. However, when classification No. 16 was issued the Plumbers' Supplies list was done away with as a distinctive heading and the various articles of plumbers' goods have, since that date, been shown under their alphabetical heading throughout the classification, and could not be shipped in mixed carloads at carload rating. The manufacturer, therefore, could not ship a mixed carload of, say, bath tubs, sinks, lavatories, laundry tubs, etc., but was required to make a straight carload shipment of each of these articles in order to obtain the carload rating thereon. This change in classification was made as a result of an apparent agreement between representatives of certain manufacturers and the carriers and was submitted to the Board for approval in proposed Supplement No. 5 to Canadian Freight Classification No. 15. While this supplement was before the Board pending approval, in 1913, there were no objections or representations filed with the Board against what was proposed and consequently the proposed supplement was approved and the changes therein were incorporated in Canadian Freight Classification No. 16, which was then issued.

The applicants who are now before the Board, however, were not, it appears, a party to the conference and agreement herein referred to. The Winnipeg Board of Trade made no representations at that time, but subsequent to the issuance of Classification No. 16 the J. H. Ashdown Hardware

Company, Limited—a firm a member of the Winnipeg Board of Trade—wrote the Board under date of February 28, 1913, in substance as follows:—

“There should be a carload rating of mixed plumbers’ supplies of iron manufacture, enamelled, the same all being of one class and handled by plumbing jobbers and supply houses. He also expressed the opinion that bath tubs and laundry tubs, being exactly of same manufacture, should be permitted to be shipped in mixed quantities in same car with mixed grades of ironware, enamelled.”

Subsequently, under date of March 19, they wrote the Board and asked that their application be filed without further action by the Board. The change in Classification was at this time already in effect.

Under date of April 12, 1924, the Amherst Foundry Company, Limited, wrote the Board as follows:—

“We have been endeavouring for some time to get permission to ship cast iron enamelled sanitary goods in mixed carloads to points west of Fort William, but up to the present we have not been able to get the consent of the railway to do so. The goods that we mention are all cast iron enamelled, such as, bath tubs, laundry tubs, sinks, lavatories, etc., and are all the same class of goods.

“We find that many of the dealers in the West who handle this class of goods are not in a position to buy a carload of each different style of goods mentioned above, as it requires a considerable amount of capital and also takes a large place for storage. Many of these dealers would buy mixed carloads if they could be shipped in that way. You will understand that some of the very large jobbers do not want this privilege granted as under the present arrangements they are able to bring in carloads of the different articles separately, and the smaller jobber has to make his purchases from them.

“We are very anxious to have this privilege and we do not see any reason why it should not be given to us. As we stated before, these goods are all of one class and there is no more danger of damage in shipping them in mixed cars than in cars of all one class of article.”

Chairman Ransom, of the Canadian Freight Association, stated that so far as the carriers were concerned they were quite willing to either continue the present classification provision which calls for shipments in straight carloads of each article, or, on the other hand, to provide a distinctive heading for plumbers’ goods enabling mixing as requested by the applicants. He stated the matter was one with respect to which there were divided views and opinions among the manufacturers and receivers. Mr. Ransom stated they had finally decided to leave the situation as at present in view of their inability to meet the views of all shipping interests, and let the Board decide the question.

The matter was set down for hearing at points in Western Canada from which representations had been made, viz., Edmonton, Regina and Winnipeg, and also at Ottawa on December 3, along with other items in controversy with respect to proposed Classification No. 17. At the sittings in Edmonton June 19, 1924, no representations were made to the Board in this matter. At the sittings in Calgary July 7, at which representations were made *re* proposed Classification No. 17, a brief reference was made to this matter by Mr. Hanna, Secretary of the Calgary Board of Trade, who stated that the provision as proposed in Classification No. 17 was satisfactory to them. At the sittings in Regina July 10, 1924, representations were made to the Board by Mr. Cook, representing the Saskatchewan Society of Sanitary Engineers, also the Regina Society of Sanitary Engineers. Mr. Cook urged that the application of the Amherst Foundry Company be acceded to, so as to enable shipments of plumbers’

goods in mixed carloads, stating this request was being made by him as representing the plumbers of the whole province. It was alleged that it was only the larger jobbers, or branch houses of eastern manufacturers, who are in a position to handle these goods in a straight carload of each article, the result being that the smaller jobbers or plumbers are forced to buy from certain large jobbers and it was suggested that this condition did not react to the benefit of the ultimate consumer. It was pointed out that the classification already contains a great many distinctive headings, or trade lists, and in connection with the construction of buildings the following distinctive headings which provide for mixed carload arrangement may be referred to:—

- Asbestos Articles;
- Boiler Parts, iron or steel;
- Brick;
- Building Metal Work;
- Building Woodwork;
- Electrical Appliances and Supplies;
- Furniture;
- Glass;
- Hardware;
- Mouldings;
- Paints and Varnishes, and Paint and Varnish Materials;
- Store or Office Fittings.

Mr. Cook urged strongly that it was discriminatory and unreasonable that there should be mixed lists such as above enumerated while plumbers' goods were denied a mixing privilege. He stated the list of plumbers' goods in the Classification comprised some 55 articles and it was not reasonable to assume that these could always be shipped in solid carloads of each article.

At the Winnipeg sittings July 14, 1924, submissions were made by Mr. Agnew, representing the Crane Company, and Mr. Maluish, of the J. H. Ash-down Hardware Company. Mr. Agnew objected to any change from the present classification provisions, desiring the continuance of the arrangement for straight carload shipments rather than mixing. He stated the chief of their objections was the liability to damage in transit when various articles of plumbers' goods were shipped in mixed carloads. However, no evidence was placed on the record showing comparative figures of claims for damage during the period that mixing was provided for, as compared with the straight carload shipments. He did mention that articles of plumbers' goods are most carefully crated and illustrated this by describing at p. 5309 the method of crating a bath tub. The applicants contend there is no more danger of damage in shipping plumbers' goods in mixed cars than in cars containing all one class of article. There is no statement on the record from the representatives of the carriers indicating that this question of liability to damage in mixed carloads vs. straight carloads had any bearing with them on the question of classification provisions as to mixing. Carriers have not made any objection whatever on this point. Before much weight could be given by the Board to this contention of Mr. Agnew, therefore, it seems to me it would be necessary that there be something far more conclusive before the Board than the general statements which are now on the record unsupported by any figures upholding the contention. Aside from this feature of the matter, Mr. Agnew's submission simply dealt with an apparent defence of the method of handling the business through jobbers as at present. Mr. Maluish simply stated that he endorsed Mr. Agnew's argument.

At the Ottawa sittings no one appeared in opposition to the application of the Amherst Foundry Company for the mixing privilege, although ample opportunity was afforded interested manufacturers to make any desired representations in regard to this application.

I am of the opinion that the heading Plumbers' Goods, at item 56, page 214, and same heading where it appears to and including page 217, should be changed to a distinctive heading so as to make all plumbers' goods a trade list, and enable the shipment of mixed carloads in accordance with the provisions of Classification rule 10.

XXXIX

RUBBER FLOOR COVERING

(Page 227, Item 20)

APPLICATION OF THE RUBBER ASSOCIATION OF CANADA, PER MR. A. B. HANNAY,
MANAGER AND SECRETARY. (File 33365.27)

In a telegram dated May 8, 1924, the Rubber Association of Canada asked that rubber floor covering be given 3rd class rating in proposed Classification No. 17, the same as linoleum, which is, they stated, a competitive article; also requesting opportunity of appearing before the Board in support of said application. In a letter dated May 8, following the telegram, Mr. Hannay entered protest against ratings of 2nd class L.C.L. and 4th class C.L. shown in proposed Classification No. 17 on rubber mats, matting and floor covering, and applied for ratings of 3rd class L.C.L. and 5th class C.L.; also stating he desired the opportunity of appearing before the Board in support of said application "for the reason that these articles are in competition with linoleum and oilcloth floor covering, which have 3rd and 5th class ratings."

At present in Classification No. 16 linoleum and floor oilcloth are provided with L.C.L. ratings of 1st class when 13 feet long and over, and 3rd class under 13 feet long; the carload rating in both shipping conditions is 5th class. The rubber floor covering is handled as rubber matting at ratings of 2nd class L.C.L. and 4th class C.L.

In proposed Classification No. 17 provision is made for linoleum and floor oilcloth, as well as wood (parquet flooring) and cork carpets or carpeting, at ratings of 3rd class L.C.L. and 5th class C.L. Carpets or carpeting N.O.I.B.N. (not otherwise indexed by name) are provided for at ratings of 1st class L.C.L. and 3rd class C.L. Mats or matting made of fibre, grass or straw are provided with ratings of 1st class L.C.L. and 4th class C.L. Rubber mats, matting and floor covering are provided with ratings of 2nd class L.C.L. and 4th class C.L.

At the Ottawa sittings December 4 Mr. Hannay modified his application by withdrawing request for reduction in the ratings proposed on rubber mats and matting, thus confining his application to the rubber floor covering. He stated (p. 9735):—

"Our whole claim for these rates is based on competition with linoleum."

It will be noted that the whole issue, as above set out, and as also developed in the record, is based solely on the ground that rubber floor covering is entitled to the same ratings as linoleum for the reason that these articles compete with each other.

The reasons advanced in support of the application were that the rubber floor covering is competitive with linoleum, similar in appearance, comparative in price, heavier in weight, and made use of in a similar way throughout the country as linoleum. It is set out by Mr. Hannay that rubber floor covering is a comparatively new article on the market, but is obtaining a substantial footing, being made use of in such places as hospitals, church aisles, steamships, moving picture theatres, Y.M.C.A. buildings, and government and office buildings generally, where linoleum would otherwise have been used.

The conditions of marketing in respect to these two articles are at the present time dissimilar, the rubber floor covering being sold direct to the contractor, while the linoleum, is distributed generally through merchants. Up to the present time there has been practically no domestic use of the rubber flooring in residences; in fact, there is no real competition between linoleum and rubber floor covering for domestic use, and while merchants stock linoleum they do not carry rubber floor covering.

From the standpoint of values and weights, taking either the oilcloth or linoleum on the one hand and the rubber floor covering on the other, there is a rather wide range. A statement made up by the Dominion Oilcloth and Linoleum Company, of Montreal, and filed by Chairman Ransom, of the Canadian Freight Association, shows floor oilcloth at an average value of 33½ cents per square yard and a weight of 2.8 pounds per square yard. Their figures as to linoleum, based on average weights and values, show a range in weight from 3¼ pounds per square yard for the lowest grade of linoleum, to 14½ pounds per square yard for their "battleship" linoleum, and in value from 54½ cents to \$1.80 per square yard, respectively. According to the record, the rubber floor covering shows a range in value per square yard from \$2.50 to \$7 and in weight per square yard from 12 to 24 pounds. With regard to these commodities (and the same remarks would be applicable to many other items throughout the classification), with such a range in weights and values obviously it is difficult to make a single computation with regard to the linoleum that would not be subject to controversy, and the same with the rubber floor covering. Mr. Hannay filed an exhibit giving a comparison in price and weight as between rubber floor covering and linoleum of similar thickness, as follows:—

VALUE PER POUND OF RUBBER FLOOR COVERING AND LINOLEUM OF
SIMILAR THICKNESS

RUBBER FLOOR COVERING

Thickness	List price	Net price	Pounds Sq. yd.	Value per pound
	Sq. yd.	Sq. yd.		
½-inc	\$2.50 less 10%-10%	\$2.025	12	16¾c.
⅜-inc.....	\$3.00 less 10%-10%	\$2.43	18	13½c.
¼-inch.....	\$4.00 less 10%-10%	\$3.24	24	13¼c.

LINOLEUM

½-inch.....	\$1.30 less 10-7½-2½	\$1.05	7	15c.
⅜-inch.....	\$1.65 less 10-7½-2½	\$1.34	8½	16c.
¼-inch.....	\$2.05 less 10-7½-2½	\$1.66	11½	14¾c.

With respect to the one-eighth-inch linoleum there appears to be an error in the above figures and the weight per square yard which reads 7 pounds should be 5¾ pounds, and the value per pound which reads 15 cents should read 18¾ cents.

Rubber floor covering and linoleum are both sold based on the price per square yard, so that it will therefore be observed that the cost of laying a floor with the rubber floor covering is not much short of being twice as much as if laid with linoleum of the same thickness. Expressed in value per pound, the linoleum figures somewhat higher, although if expressed in value per cubic foot the rubber floor covering would be almost double that of the linoleum. As illustrative of the difference between the two floor coverings, taking one-quarter-inch thickness, the cost of flooring a building of 3,000 square yards with rubber floor covering at \$3.24 per square yard would be \$9,720. One-quarter inch linoleum at \$1.66 per square yard would, for the same job, cost \$4,980, so that the cost of the rubber flooring would be \$4,740 more than linoleum. In other words, for an additional \$240, 6,000 square yards of one-quarter-inch linoleum would cost the same as 3,000 square yards of the rubber floor covering. If the rubber floor covering were moving from Montreal to Winnipeg for flooring a building of 3,000 square yards, the difference in freight cost as between the proposed rating and that applied for would be \$176.40, which would be less than 4 per cent of the \$4,740 difference in price cost between these two kinds of floor covering.

The Dominion Oilcloth and Linoleum Company were represented at the sittings by Mr. Sheppard, who stated that the linoleum manufacturer does not consider the rubber floor covering in any way competitive. He contended that equality in freight rates would not affect the alleged competition between the two articles; further, that he was not interested in the classification ratings on rubber floor covering and even if they were lower than provided for linoleum it would not in any way affect the linoleum manufacturer. Mr. Sheppard stated his object in appearing before the Board was to request that no change be made in the proposed provision for linoleum which is substantially a continuance of the ratings as they have existed in the past. He did not want the linoleum ratings raised to those proposed for rubber floor covering, not by reason of competition between these two articles, but on account of very severe competition which the Canadian linoleum manufacturer has to meet in connection with importations of this article from England. It is represented that there are very large factories with large capital and low labour costs in England, and that the English manufacturer makes a freight allowance to the Canadian buyer, which is nearly sufficient to absorb completely the freight charges, which places the Canadian manufacturer at a tremendous disadvantage, consequently the Canadian manufacturer would be unable to stand any increase in the ratings that have heretofore existed on linoleum and as now proposed.

The conclusions which I think are fairly reached on the record are that as to household or domestic use at the present time competition between rubber floor covering and linoleum is practically non-existent. With regard to the use of these articles in offices, public buildings, etc., the rubber floor covering being almost twice as valuable per square yard (which is the unit of sale) as linoleum, if the contractor is not stinted or held down as to price the rubber floor covering may be used, but where it is necessary to effect a saving in cost linoleum would probably be used.

The applicants chose to base their application solely on alleged competition with linoleum, and that is as far as the case was developed. On that issue they have not, in my opinion, shown that there is sufficient actual competition to create a case of unjust discrimination by reason of a difference in classification ratings; have not proven that the readjustment of classification sought would have any appreciable effect on the alleged competition; therefore, on the issue as presented, the Board would not be justified in directing the classification revision applied for, and the application fails.

CARLOAD RATING ON EMPTY TIN CANS, N.O.I.B.N.

(Page 234, Items 2, 4 and 6)

COMPLAINT OF THE DOMINION CANNERS, LTD., HAMILTON, ONT., AND THE QUALITY CANNERS OF CANADA, LTD., WINDSOR, ONT. (FILE 33365.6)

In proposed Classification No. 17 the provision for empty tin cans, butter or lard; oil; oil, jacketed; also empty tin cans, N.O.I.B.N. (not otherwise indexed by name), when shipped loose in carloads is shown at 5th class, minimum carload weight 17,000 pounds, while at the present time in Classification No. 16 the provision for these cans in the same shipping condition is 6th class, minimum carload weight 18,000 pounds. When these cans are shipped in boxes in carloads the provision therefor both at present and in proposed Classification No. 17 is 5th class.

The complainants here are the Dominion Canners, Limited, of Hamilton, and the Quality Canners of Canada, Limited, of Windsor, Ont., who object to the proposed provision for loose cans, N.O.I.B.N., in carloads, covered by items 2, 4 and 6, page 234. There were also complaints submitted to the Board by the Associated Boards of Trade of British Columbia, the Broder Canning Company, of New Westminster, B.C., the McDonald Jam Company, Vancouver, and Mr. R. O'Leary, of Richibucto, N.B. By letter of June 21, 1924, the Associated Boards of Trade of British Columbia withdrew their complaint, and at the hearing Mr. Ransom, of the Canadian Freight Association, made the statement that they had, in conference with the canning companies of British Columbia, satisfactorily adjusted their complaints.

Mr. Ransom also stated that the complaint of Mr. R. O'Leary, of Richibucto, N.B., which related to empty tin cans used in lobster canning, was being taken care of to the satisfaction of the complainant by the establishment of commodity rates on basis of 6th class, minimum carload weight 20,000 lbs. These lobster cans, it is stated, load to 21,000 or 22,000 lbs. per car, which is an appreciably heavier loading than is possible in the case of the cans used by canners of fruits and vegetables.

This leaves only the complaints of the Dominion Canners and the Quality Canners of Canada to be considered. Mr. Ransom stated that their Classification Committee had met the can manufacturers of Canada and had satisfied every one except the two complainants just named. The justification advanced by Mr. Ransom for the revision in the carload rating on the loose cans was based on the following grounds:—

1. Originally loose cans were rated at 6th class in carloads so as to exclude them from the classes of freight that would require to be handled by the carriers, as they did not desire to handle loose cans. In the revision of the classification this situation is altered, as rule 13, section 3, stipulates that, unless otherwise provided owners are required to load into or on cars and to unload from cars all freight carried at carload ratings. Heretofore rule 12 of Classification No. 16 has only stipulated that freight in 6th, 7th, 8th, 9th and 10th classes must be loaded and unloaded by owners.

2. The raw material from which the cans are made is classified 5th class in carloads, with minimum carload weight of 36,000 pounds, and it is a pretty well recognized principle of classification that the manufactured article should not be rated lower than the raw material from which it is made.

3. The proposed revision makes the same carload rating on tin cans whether carried loose in bulk, or in boxes, and to provide for them in bulk at a lower rating than when shipped in boxes would be a discrimination against

the shipping condition last named, and this discrimination could not consistently be removed by reduction of the rating on cans in boxes to 6th class as this would, in turn, to be logical or consistent, suggest a similar reduction in the ratings that have long existed, and held to be reasonable, on many other manufactured articles of tinware. This was practically the only item in the classification where the rating was higher for a shipment in a good container (a box) than charged for the same article shipped loose in the car.

4. The carriers found that where it is necessary to unload a portion of the contents of a car to repair the car, or where it became necessary to transfer the entire contents, it is practically impossible to remove or transfer loose cans without causing damage, and as these cans are shipped open at one end if they become dented to a very slight extent on the rim they cannot be properly sealed on the can-sealing machine and therefore become a total loss which the carriers would be obliged to assume. Cans shipped in boxes would not incur the same risk of damage in transfer or handling in transit.

Mr. Ransom filed the following exhibit showing what would be involved in the way of difference in charges per car on representative shipments from Niagara Falls, Ont., which is a can manufacturing point, and in connection therewith stated that while it included two western Canadian points his information was that no cans were being shipped from eastern Canadian territory to points in western Canada.

TIN CANS, C.L., FROM NIAGARA FALLS, ONT.

To	Per car earnings		Difference
	5th class, minimum weight 17,000 lbs.	6th class, minimum weight 18,000 lbs.	
Windsor, Ont.....	\$ 58 65	\$ 54 90	\$ 3 75
London, Ont.....	49 30	45 00	4 30
Woodstock, Ont.....	46 75	45 00	1 75
Hamilton, Ont.....	33 15	32 40	0 75
St. Catharines, Ont.....	20 40	20 70	0 30
Toronto, Ont.....	42 50	43 20	0 70
Peterborough, Ont.....	58 65	54 90	3 75
Montreal, P.Q.....	77 35	74 70	2 65
Moncton, N.B.....	104 55	104 40	0 15
St. John, N.B.....	104 55	104 40	0 15
Port Arthur, Ont.....	134 30	119 70	15 60
Winnipeg, Man.....	193 80	181 80	12 00

Omitting Port Arthur and Winnipeg, the average increase per car is \$1.82.

The Quality Cannery of Canada were not represented at the hearing. Mr. Caldwell, representing the Dominion Cannery, Ltd., submitted a prepared statement outlining his objections to the revision in so far as relates to items 2, 4 and 6 on page 234, empty cans, N.O.I.B.N. There is no objection on the record with regard to the other cans already described herein, which are similarly rated.

Mr. Caldwell referred to the present rating as having been prescribed by the Board by its Order No. 13850 of June 2, 1911. A reference to the record in that case shows that at that time the proposition of the carriers was to provide a carload rating of 4th class, minimum 16,000 pounds, on the loose cans, which is a rating one class higher than is now proposed. The proposal at that time also specifically provided that shipments were to be loaded by shipper and unloaded by consignee. In other words, while the cans were to be transferred from a non-handled carload class to one of the classes based on handling by the carriers, they were still to be non-handling by carriers, by the qualification referred to. At that time this involved an anomaly in classification-making

by providing for non-handling in connection with traffic in one of the handling classes, and this feature was given due weight in the decision of the Board then arrived at. By reason of the change in the provision of this rule, as already herein referred to, the conditions are now substantially different from those then before the Board. At that time the Board held that the rating of 5th class C.L. for the crated or boxed cans was proper, being the same as provided for other tinware.

Mr. Caldwell stated that the principal sized cans they handle are 2's, which average approximately 16,400 pounds per standard car; 2½'s, averaging 14,400 pounds; and 10's, averaging 9,835 pounds. The average loading of the three types of cans would be around 14,000 pounds, so that generally speaking, the minimum carload weight proposed, even though it is a reduction from the present minimum carload weight, is in excess of the average loading. This, it may be noted, is not an unusual, but, on the other hand, a rather general condition with regard to minimum carload weights provided in the Classification for numerous light and bulky commodities, the minimum weight, in conjunction with the rating, being considered together in the fixation of what is felt to be a reasonable classification provision therefor.

On the question of the propriety and reasonableness of the proposed provision for these loose cans in carloads from the standpoint of the classification elements that are given weight in such cases, no evidence whatever was adduced by Mr. Caldwell, or in the written submission of the Quality Cannery of Canada.

Having analysed the provisions generally for various articles of sheet metal ware, I am of the opinion that the provision for 5th class rating on the loose cans in carloads, thus putting them on the same footing as the cans in boxes; on the same basis as other cans that are not covered by the objection of the complainants here; and on a parity with the ratings on other articles of sheet metalware that from a classification standpoint are analogous, is a reasonable provision and should be approved.

XLI

CAPS, BOTTLES

Iron, Steel or Tin and Cork, Paper or Pulpboard combined
(Page 234, Items 12 and 13)

COMPLAINT OF THE CROWN CORK AND STEEL COMPANY, TORONTO. (FILE 33365.2)

These are now classed L.C.L. 2, C.L. 5; but they are not included in any trade list or distinctive heading and, consequently, cannot be shipped in mixed carloads from east of Port Arthur to points west thereof.

It is now proposed that provision be made for these articles under the distinctive heading of Sheet Metalware, which will permit mixing in the territory above referred to.

Complainants say they are large manufacturers of these bottle caps; at the same time, they do not manufacture any other articles of sheet metalware, and not being able to mix in the territory in question they must, when quantities less than carlot, are wanted, ship on less than carlot rating. They contend that what is proposed would put them at a disadvantage as compared with competitors who, in addition, manufacture sheet metalware.

Complainants stated that they ship mostly in less than carload quantities to the West; they also ship in carloads to the Winnipeg Branch, although practically 50 per cent of the shipments to this branch are also less than carloads. They make occasional carload shipments to points west of Winnipeg.

The matter of the proposed arrangement was emphasized by the Canadian Crown Cork Company, Montreal; the Dominion Crown Cork Company, Toronto; and the McDonald Manufacturing Company; and Sheet Metal Products, Toronto. All of these were interested in the mixing provision and emphasized its advantage.

The carriers stated that it was a matter of indifference to them what arrangement was adopted; it was a matter of divergent trade interest and it was, therefore, left to the Board to deal with.

In dealing with this matter, and following the decisions of the Board, the Board should give such consideration as is proper to the effect that the classification provision has upon the business of the manufacturers. Giving effect to complainants' application, all manufacturers will be on an equality, i.e., if they ship in less than carload quantities the L.C.L. rate will apply, and if they ship in carloads the carload rating governs. The proposed classification provision would continue this situation with respect to complainants, but the other companies, by reason of their ability to ship in mixed carloads with sheet metalware, would be able to obtain the carload rating on L.C.L. quantities to the detriment of complainants who do not manufacture any other articles. In the Judgment of the Board in the application of H. E. Ledoux Company, Winnipeg, the Board stated:—

“Consideration must be given to the effect the granting of such a request would have upon the business of other manufacturers. Other manufacturers . . . who do not carry on their business in the same way . . . would be discriminated against by the preference which such a rating would give the applicants.”—12 C.R.C. 3.

Again, in the matter of Canadian Consolidated Rubber Company, Limited, Montreal, *et al*, *re* classification of rubber goods, the question involved was the desire of applicants to have a carload rating provided in the Canadian Classification on rubber boots, shoes and socks, so that they would be able to mix these articles with other rubber goods in carload shipments. In its judgment the Board stated:—

“The question, therefore, really is, whether the applicants should have this mixing privilege or not. Rubber boots and shoes enter into competition with leather and felt boots and shoes in all parts of the country. At present all manufacturers of boots and shoes, of whatever material, are on equal terms in their competitive markets so far as railway rates are concerned. Under the commodity tariffs referred to they can all ship their products in carload lots, 3rd class. The manufacturers of leather or felt boots and shoes have not the privilege of mixing those products with other leather or felt articles. It might well be said that an undue preference would be given the applicants if their application was granted, and they would thus be enabled to get their rubber boots and shoes into a competitive market with leather boots and shoes at a carload rating, although the carload of rubber goods contained only a small shipment of rubber boots and shoes.”—*Board's Printed Judgments and Orders, Vol. VIII, p. 36.*

It may also be pointed out that the position taken by the Interstate Commerce Commission has been along the same lines. For example, in the case of *Paper Mills Company v. Pennsylvania Railroad et al*, 12 I.C.C. 438, there was decided the question of mixed carload ratings for paper bags and wrapping paper. The digest of the case is that complainants at Baltimore, Md., and two concerns at Atlanta, Ga., were the only parties doing business in Southern Classification territory who shipped both paper bags and wrapping paper. The

defendant railroad companies refused to apply carload rates to mixed carloads of paper bags and wrapping paper shipped to points in Southern Classification territory, although with respect to shipments within the state of Georgia the Railway Commission of that state required defendants to make such application. This operated to place dealers outside Georgia at a disadvantage. While an Order requiring carload rates on mixed carloads of the articles in question would have benefited complainants, many others who handled only one of such articles would have been correspondingly injured, since, while they would still have to pay L.C.L. rates on L.C.L. shipments, their competitors who dealt in both articles would be enabled by shipping in mixed carloads to obtain carload rates on L.C.L. shipments. It was held by the Interstate Commerce Commission that the refusal to apply carload rating on mixed carloads of paper bags and wrapping paper would not subject complainants to undue preference or disadvantage.

In my opinion, the provision for these bottle caps should be eliminated from the sheet metalware list on page 234 of proposed Classification No. 17 and transferred to page 68 under their alphabetical heading. This involves the transfer of these articles only, and not the other articles already referred to, viz., covers or tops of can bottoms.

XLII

There is still outstanding to be dealt with *Note 2* on page 211, under the heading of Petroleum and Petroleum Products, reading as follows:—

Note 2.—Petroleum or Petroleum Products, other than Fuel Oil or Road Oil, in tank cars, will be accepted for transportation only when consigned to parties accepting delivery on private sidings, or when consigned to parties accepting delivery from railroad sidings where facilities exist for piping the oil from tank cars to permanent storage tanks.

Special investigation has been made in regard to this in connection with the conditions in various sections of the country, and it is reserved to be dealt with under a separate ruling.

Commissioner Boyce concurred.

June 15, 1925.

COMMISSIONER OLIVER:

Re Proposed Freight Classification No. 17

MIXING RULE.

The mixing rule limits the rights of shippers regarding the classes of goods that may be included in a carload at a certain rate.

The question regarding it arises out of the fact that it is an accepted and necessary condition of railway operation that the value of the commodity shall be considered as well as its weight and volume in fixing the charges for its haulage.

While the actual haulage cost of a car of coal and of groceries of the same weight is approximately the same, in railroad practice the charges for haulage of each widely differ.

These differences in the charges for rendering to shippers identically the same service at the same cost to the railways constitute what is called the Freight Classification.

The justification for the difference in haulage charges on different commodities, as defined in the Freight Classification, is because in practice it is found that for the railway to earn the gross revenue that will enable it to pay operating costs, and interest on the investment, it is necessary that there shall be differences in rates, bearing some proportion to the differences in the respective values of the several commodities at point of delivery. The reason of this is that high rates on a commodity of low value would prevent its movement, so that,—

First, it would not give any revenue to the railway; and,

Second, its failure to be moved to where it would be of use would hamper industry and trade to the detriment of business generally and therefore to the detriment of the railway. On the other hand, unless comparatively high rates were charged on some commodities, the railway would not earn operating expenses and interest on investment, and therefore, could not continue to render necessary service.

The classified rates are numbered from one to ten. The Freight Classification under consideration places all commodities in one or other of the several classes to which these ten rates apply. For instance, in car lots only, dry goods and boots and shoes are first class; butter is third class; cheese is fourth class; many but not all lines of groceries and hardware are fifth class; agricultural implements are sixth class; asphalt is seventh class; grain and grain products eighth class; live stock ninth class; lumber and coal, salt, etc., tenth class; all goods in less than car lots are placed in classes one, two or three; articles in seventh, eighth, ninth and tenth classes are to a large extent hauled at special commodity rates, lower than the class rates.

The rule regarding mixing has no application, except as to car lots.

In the case of goods shipped from points east of Fort William to points west of Fort William, the present Freight Classification makes arbitrary provision for grouping within the respective classes certain commodities of similar character, with the purpose that articles comprised in one group shall not form part of a carload made up of articles of another group, although both commodities are of the same class and are entitled to the same haulage rate.

This provision, which refuses to shippers the class rate to which all the goods in the car are entitled, because they belong to different groups, does not apply as between points in Eastern Canada or in the United States.

Application was made to the Board on behalf of the retail merchants of the prairie provinces to have the same rule as to mixed carloads which applies in the east also apply in the west. This was opposed by wholesalers in the West, who contended that their business as wholesalers had been established and built up under the conditions hitherto existing which prohibited the mixing of carloads of goods of different groups of the same class.

It would appear to me that the question properly at issue is not the wishes or interests of either the western retailers or western wholesalers, but of the consuming public of the west. I am further of the opinion that the less restriction there is on the transfer of goods between the manufacturer or importer and the consumer, the better it is for all parties concerned, and for the country at large.

The right of eastern manufacturers and wholesalers to ship to western retailers at any certain class rate any goods of that class in a single carload, seems to me to be inherent to the principle of classification. No reason has been brought out, sufficient in my mind to lead to the conclusion that what is right or expedient in this regard throughout Eastern Canada and the Western States would be wrong or inexpedient in the case of Western Canada.

The fact that a condition of discrimination against the eastern wholesaler and western retailer now exists is not, to my mind, a sufficient reason for its

continuance. I am therefore of opinion that mixing of all goods of the same class should be permitted in making up carloads for distribution at western points.

RULE 7

In the case of Rule 7, I agree with the opinions of the Assistant Chief Commissioner, as set forth at the foot of page 24 of his Draft Judgment.

RULE 13

I agree with the conclusions of the Assistant Chief Commissioner in regard to this rule, as set forth in his Draft Judgment (pages 25-26).

RULE 15

I agree with the conclusions reached by the Assistant Chief Commissioner in regard to this rule, as set forth in his Draft Judgment (pages 26-27).

BAGS AND BAGGING

Page 50, Items 30 and 40: I agree with the conclusions reached by the Assistant Chief Commissioner in regard to this complaint (p. 28, Draft Judgment).

CARLOAD RATINGS ON BASKETS

Page 52, Items 5-7-16-18: I agree with the conclusions of the Assistant Chief Commissioner in regard to these items (see pp. 29 to 31 incl., Draft Judgment).

STATIONERY AND SCHOOL BOOKS

In mixed Carloads; Page 58, Item 3: I agree with the conclusions of the Assistant Chief Commissioner in regard to these items (pp. 31 and 32, Draft Judgment).

BUTTER BOXES, CARLOAD RATING

Page 59, Item 12: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item (pp. 33 to 36 incl., Draft Judgment).

BOXES: SHIRTWAIST OR SKIRT

Page 60, Item 32: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item (pp. 36 to 39 incl., Draft Judgment).

BROOM CORN CARLOAD RATING

Page 61, Item 52: I agree with the conclusions of the Assistant Chief Commissioner with regard to this item (pp. 39 to 40 incl., Draft Judgment).

BUTTER CARLOAD RATING

Page 66, Item 48: I agree with the conclusions reached by the Assistant Chief Commissioner, in regard to this item (pp. 41 to 46 incl. Draft Judgment).

VINEGAR BARRELS; EMPTY-RETURNED

Page 69, Item 10: I agree with the conclusions reached by the Assistant Chief Commissioner with regard to this item (pp. 46 to 48 incl. Draft Judgment).

EMPTY BISCUIT TINS AND WOODEN CASES RETURNED

Page 69, item 18-20-30 and 32: I agree with the conclusions of the Assistant Chief Commissioner with regard to this item (pp. 48 to 49 incl. Draft Judgment).

CARBIDE OF CALCIUM

Page 80, Item 46: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item (pp. 49 to 50 incl. Draft Judgment).

ELECTRIC STOVES

Electric Stoves, Cooking, N.O.I.B.N., page 107, Item 12 (pp. 51 to 57, Draft Judgment, Assistant Chief Commissioner).

COMPLAINT OF CANADIAN STOVE FOUNDERS, ET AL. (FILE 33365.33)

This is the protest of Canadian stove manufacturers against the removal of electric stoves, etc., in car lots from fifth to fourth class.

Hitherto electric stoves were included under the group heading, Stoves, ranges, heaters, etc., and could be included in mixed carloads at fifth class rate. The new classification specifically excludes them from the group which includes stoves, ranges, etc., and places them in the fourth class. This has the double effect of directly increasing the freight charge on electric stoves from the fifth to the fourth class rate; but besides, by that change is taken away the privilege of shipping in mixed carloads of stoves which formerly prevailed.

The weight of stoves, ranges, etc., makes any increase in freight charges a serious matter on the long haul from Eastern to Western Canada. As stoves are a basic necessity, it is important that the cost to the consumer should not be unduly increased.

Generally speaking, electric appliances take a higher classification than such articles as stoves. In revising the rate classification the railway companies naturally looked for fair opportunity to secure increased earnings. "An electric stove is an electric appliance, therefore why not classify it as such?"

But, on the other hand, to the householder a stove is only a stove, and therefore should not be classed as anything else. Wood, coal, gas and oil stoves all take the same classification, though they differ widely in many respects. Then, why should not the electric stove take the same classification, when it only exists to serve the same purpose?

The claim for a higher rating on electric than on coal stoves is based to some extent on their higher selling price. One estimate was that they cost 40 per cent more than coal stoves of like capacity. Usually the higher priced article pays the higher freight rate. But in this case the weight of the electric stove is greater than that of the coal stove in proportion to its bulk. To that extent it is a better article for railroad carriage than a coal stove, and I believe that fact is entitled to consideration in the fixing of the rate. As the electric stove weighs more than the coal stove, the railway earns more on each electric stove than it carries than on each coal stove, at the same rate of freight.

The western householder pays the greater first cost of the electric stove, and the greater cost of its haul westward at the coal stove rate, because of its greater weight. To add on to his costs a higher rail rate, must so increase the gross costs as to materially restrict the development of the trade to the detriment of both the manufacturer and the railroad.

For these reasons I am of opinion that electric stoves should be restored to the rate and group which includes wood, coal, gas, oil and other stoves.

SALT; EPSOM SALTS: CHLORIDE OF LIME, ETC.

Mixing Privileges, and Carload Minimum Weights on: Pages 130-144 Grocery List: I agree with the conclusions of the Assistant Chief Commissioner with regard to this item, as set forth in his Draft Judgment (pp. 58 to 60 inclusive).

STOVE BLACKING.

Shoe Dressing or Blacking; and Stove Polish; Page 133, Items 22-24 and 26, and Page 140, Item 11: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item, as set forth in his Draft Judgment (pp. 60 to 66 inclusive).

DRIED FRUITS.

Dried Fruits: Page 135, Items 20 and 22; Page 136, Items 1 and 2: I agree with the conclusions of the Assistant Chief Commissioner in regard to these items, as set forth in his Draft Judgment (pp. 66 to 68 inclusive).

CHEWING GUM.

Page 136, Item 14: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item, as set forth in his Draft Judgment (pp. 68 to 71 inclusive).

FRUIT JAR RINGS.

Page 137, Item 9: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item as set forth in his Draft Judgment (pp. 72 to 73 inclusive).

MACARONI, ETC.

Page 137, Item 20: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item as set forth in his Draft Judgment (pp. 73 to 77 inclusive).

L.C.I. RATINGS ON SALT, COMMON.

Page 140, Item 19: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item as set forth in the Draft Judgment (pp. 77 to 79 inclusive).

TOBACCO, PLUG OR TWIST.

Page 143, Item 26: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item, as set forth in his Draft Judgment (pp. 79 to 81 inclusive).

ASPHALT SHINGLES AND ROOFING.

Page 146, Item 9; Page 155, Item 37: I agree with the conclusions of the Assistant Chief Commissioner in regard to these items, as set forth in his Draft Judgment (pp. 82 to 85 inclusive).

BARRED WIRE: MINIMUM CARLOAD WEIGHT ON.

Page 160, Item 22: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item, as set forth in his Draft Judgment (pp. 85 to 86 inclusive).

FOREIGN WINES:

Page 174, Item 30: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item, as set forth in his Draft Judgment (page 87).

LUMBER MINIMUM CARLOAD WEIGHT ON:

Page 178, Items 2 and 4: I agree with the conclusions of the Assistant Chief Commissioner in regard to these items, as set forth in his Draft Judgment (pp. 87 to 88 inclusive).

MACHINERY AND MACHINES:

Page 178—Note 3: I agree with the conclusions of the Assistant Chief Commissioner in regard to this item, as set forth in his Draft Judgment (pp. 89 to 92 inclusive).

PACKING CUSHIONS OR MATS: EXCELSIOR:

Page 205, Items 5 and 6: I agree with the conclusions of the Assistant Chief Commissioner in regard to these items, as set forth in his Draft Judgment (pp. 92 to 93 inclusive).

PLUMBERS' GOODS:

Page 214, Item 56, to Page 217, Item 36, inclusive: I agree with the conclusions of the Assistant Chief Commissioner in regard to these items, as set forth in his Draft Judgment (pp. 93 to 98 inclusive).

RUBBER FLOOR COVERING:

Rubber Floor Covering: Page 227, Item 20: Application of the Rubber Association of Canada, to have rubber flooring given the same classification and rating as linoleum: File 33365.27.

At present the ratings are:—

Carlots:

Linoleum.. . . .	5th class
Rubber flooring.. . . .	4th class

Less than carlots:

Linoleum.. . . .	3rd class
Rubber flooring.. . . .	2nd class

The purposes for which linoleum and rubber flooring are used are the same, namely the covering of floors which carry considerable wear.

The cost per pound of the rubber flooring averages somewhat less than that of the linoleum and the weight per square yard of surface covered is nearly double as great. As classified at present the heavier commodity, although made of cheaper material, is placed in the higher class, and therefore pays a higher freight rate than the competing article. A square yard of rubber flooring of a certain thickness will cost more than a square yard of the same thickness of linoleum, because the material of which it is composed is so much heavier, but that would appear to me to be a reason why it should be placed in a lower rather than a higher class.

Articles made of rubber usually carry a high classification. That may be why a higher rate of freight has been imposed upon rubber flooring than on linoleum, but the classification usually applied to goods in whose making rubber is largely used does not properly apply to rubber flooring for the reason that the raw material used in its composition is not commercial rubber such as is used in rubber goods which have the higher classification. Rubber flooring has been evolved as a means of utilizing the waste rubber that accrues from year to year because articles made of commercial rubber have become worn out and useless. Rubber once used cannot be used again in making any of the articles usually classified as rubber goods.

The useful employment of an otherwise waste material would seem to me to be a fair argument for giving the product a low freight classification. In fact it would appear to me that to place rubber flooring in the 2nd and 4th classes, when linoleum is in the 3rd and 5th is an evidently unjust discrimination.

Regarding the suggestion which I understand to be made that linoleum and rubber flooring are not competitive because they reach the ultimate user through different selling methods, and generally speaking, are used under somewhat different conditions, I desire to say that I cannot agree that articles intended to serve like purposes are not essentially competitive. It is possible, I admit, that selling arrangements may lessen or possibly exclude actual competition; also that price differences may be such as to drive different

commodities intended to serve like purposes into the hands of different classes of users, but I am compelled to maintain that where there is a large proportion of instances in which either article will serve the same purpose, as in the case of rubber flooring and linoleum, they are essentially competitive, and should be treated as such in freight classification, in so far as the feature of competition is entitled to be considered in that connection.

Both rubber flooring and linoleum are heavy in proportion to their value; therefore freight charges form an important part of the cost to the ultimate user. The difference in freight classification against rubber flooring, as compared with linoleum has the effect of unduly increasing its cost to the user and therefore restricting its field of service; in other words preventing it from competing with linoleum to the extent that it would if it were carried at the same rates.

I cannot think that it is any part of the duty of this Board to lessen or prevent competition between articles intended to give like service, by giving one a higher freight classification than the other, unless that higher classification is otherwise amply warranted.

My conclusions are,—

(1) That rubber flooring and linoleum are used for the same purposes under like conditions;

(2) That unless other reasons are shown, the fact that the two commodities compete in rendering the same service, entitle both to the same freight classification.

(3) The fact that rubber flooring does not contain any proportion of commercial rubber, and is in fact chiefly composed of material that otherwise would be waste, namely worn out and useless rubber goods, properly debars it from being given a classification having any regard to that given commercial rubber in any form;

(4) The fact that rubber flooring weighs nearly double as much per square yard as linoleum is an argument for a lower, and against a higher classification than that given linoleum.

For these reasons I am compelled to hold that the placing of rubber flooring in a higher freight classification than linoleum is unjust discrimination, within the meaning of the Act.

EMPTY TIN CANS: CARLOAD RATING ON

Page 234, Items 2-4 and 6: I agree with the conclusions of the Assistant Chief Commissioner in regard to these items, as set forth in his Draft Judgment (pp. 104 to 108 inclusive).

CAPS: BOTTLE

Caps, Bottle: Iron, Steel, or Tin and Cork, Paper or Pulpboard combined. Page 234, Items 12 and 13.

COMPLAINT OF THE CROWN CORK AND SEAL COMPANY, TORONTO (FILE 33365.2)

Classification No. 17 places bottle caps under a group heading, which allows them to be shipped west of Fort William as part of a carload, the balance of which is made up of other articles included in that group. Up to the present time bottle caps have not been included in any group and therefore could not get a carload rate by being shipped in full carloads.

The Crown Cork and Seal Company of Toronto applied to have bottle caps removed from the new group classification and restored to individual classification. The Crown Cork and Seal Company makes only bottle caps. Having no other article of manufacture it usually ships in less than car lots. Other bottle cap manufacturers who make other articles which are of the classification in which bottle caps are included by Classification No. 17 must

also ship their bottle caps in less than car lots. But if the proposed change is confirmed, these manufacturers will, by making up mixed carloads, be able to get carlot rate on less than carload lots of bottle caps, thereby putting the Crown Company, as at present circumstanced, at a disadvantage in reaching western customers.

If the argument of the Crown Company is to be taken as they presented it, they are asking to be compelled to pay a higher rate on the greater part of their trade with the west than is provided by Classification No. 17.

It is generally accepted as sound economics that manufacturer and customer should be brought together with the lowest possible intervening cost. This is the direction of the change in regard to bottle caps, made by the new Classification No. 17. If the endeavour to reduce the cost of any certain product of eastern Canadian manufacture to western customers is a business injury to some of the manufacturers of that article, that is of course regrettable but I cannot agree that this Board should use the power vested in it to maintain any certain advantage now enjoyed by a single manufacturing enterprise, when that advantage consists in maintaining a barrier of unnecessarily high rail charges between the eastern manufacturer and the western consumers.

I cannot therefore, assent to their application.

OTTAWA, June 23, 1925.

GENERAL ORDER No. 421

In the matter of the application of the Canadian Freight Association on behalf of the railway companies subject to the jurisdiction of the Board under Section 322 of the Railway Act, 1919, for approval of proposed Canadian Freight Classification No. 17, superseding and cancelling Canadian Freight Classification No. 16 and supplements thereto, on file with the Board under:

File No. 33365.

FRIDAY, the 17th day of July, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Notice having been given by the railway companies in the *Canada Gazette*, as required by section 322 of the Railway Act, 1919, and to the mercantile organizations enumerated in the General Orders of the Board Nos. 271, 348 and 353;

And upon hearing the submissions with respect to items to which objections were filed at the sittings of the Board held in Saskatoon, June 10, Edmonton, June 13, Vancouver, June 23, Victoria, June 25, Nelson, June 30, Calgary, July 7, Lethbridge, July 9, Regina, July 10, Winnipeg, July 14, 15 and 16, and Ottawa, December 3 and 4, 1924, in the presence of counsel for, and representatives of the railway companies, boards of trade, various trade organizations and individual shippers, and what was alleged; and reading the written submissions filed also in objection thereto, and the report of its Chief Traffic Officer,—

The Board orders: That the said proposed Canadian Freight Classification No. 17, superseding and cancelling Canadian Freight Classification No. 16 and supplements thereto, as submitted for approval by G. C. Ransom, Chairman of the Canadian Freight Association, by his letter dated April 9, 1924,

and as amended by proposed Supplement No. 1 to proposed Canadian Freight Classification No. 17, filed with the Board by Chairman Ransom with his letter of September 30, 1924, and as further amended by memoranda submitted by Chairman Ransom showing changes and additions to proposed Canadian Freight Classification No. 17 as filed with the Board April 9, 1924, agreed to in conferences between the carriers and shippers, marked in the Board's file as Exhibits "A" and "B," copies of which were furnished to various trade organizations and boards of trade, be and it is hereby, approved, subject to the changes prescribed and authorized by the judgment of the Board dated June 15, 1925, herein, which is hereby made part of this Order; the same to become effective on thirty days' notice after the date of issue.

S. J. McLEAN,
Assistant Chief Commissioner.

Complaint of the Municipal Council of the Corporation of the Village of Ayr, Ont., against lack of sufficient protection at crossing of the Canadian Pacific Railway at Northumberland Street, Ayr, Ont.

File 9437.961.

JUDGMENT

McLEAN, Assistant Chief Commissioner:

Complaint was received from the municipal council of the village of Ayr, Ont., setting out that the Northumberland street crossing over the Canadian Pacific railway at Ayr, Ont., was dangerous and not sufficiently protected.

An inspection of said crossing was made by Commissioner Boyce and myself on June 18, 1925.

There have been two accidents at this crossing. It is, of course, obvious that the question of protection at a crossing does not turn upon the matter of enumeration of accidents. At the same time, it is justifiable to consider the detail in connection with the accidents just to see what elements of danger appear.

On November 25, 1912, there was an accident in which a man who was driving over the crossing suffered slight injuries. The crossing is protected by an electric bell, which it was testified was ringing at the time; and according to the Board's reports the injured man heard the train coming but hurried up in order to get over before the train arrived at the crossing. When he saw the train approaching, he jumped from his buggy and was struck by the engine. On what was disclosed, it appears that reasonable care on the part of the individual injured would have avoided an accident.

The second accident took place on November 2, 1924. A lady was driving a spirited horse which became frightened as a track motor approached the Northumberland street crossing. The horse bolted and turning around sharply upset the buggy, resulting in the lady being injured. It thus appears that while the horse was frightened by the track motor, the injury was not caused by any vehicle on the track running into the horse and buggy.

The first of these accidents took place at the south side of the track where the electric bell is located. The second accident took place on the north side. The traffic on the crossing has been submitted for a forty-eight-hour period. from 6 a.m., June 22, to 6 a.m., June 24, 1925. This is a period from Monday morning until Wednesday morning.

In the first twenty-four hours of this period, the statement shows 343 vehicles, 124 pedestrians, and 54 train movements. During 9 hours, there were no trains. There were two hours during which there was no highway traffic, although 7 train movements. This leaves for 13 hours, 212 vehicles, 91 pedestrians, and 47 trains; or 16.3 vehicles, 7 pedestrians, and 3.6 trains per hour.

In the second twenty-four-hour period, there were 438 vehicles, 119 pedestrians, and 61 trains. During 5 hours, there were no trains; and during three hours there was no highway traffic, while at the same time there were 5 trains. That is to say, during 16 hours there were 380 vehicles, 97 pedestrians, and 56 trains; or 23.7 vehicles, 6 pedestrians, and 3.5 trains per hour.

The following detail is available regarding the sight lines at the crossing:

APPROACHING CROSSING FROM THE SOUTH AND LOOKING EAST

At	25	feet	distant,	a	view	of	620	feet	can	be	obtained.
"	50	"	"	"	"	"	328	"	"	"	"
"	75	"	"	"	"	"	266	"	"	"	"
"	100	"	"	"	"	"	248	"	"	"	"
"	150	"	"	"	"	"	135	"	"	"	"
"	200	"	"	"	"	"	77	"	"	"	"
"	250	"	"	"	"	"	62	"	"	"	"
"	300	"	"	"	"	"	53	"	"	"	"

APPROACHING CROSSING FROM THE SOUTH AND LOOKING WEST

At	25	feet	distant,	a	view	of	2,500	feet	can	be	obtained.
"	50	"	"	"	"	"	1,100	"	"	"	"
"	75	"	"	"	"	"	700	"	"	"	"
"	100	"	"	"	"	"	210	"	"	"	"
"	150	"	"	"	"	"	80	"	"	"	"
"	200	"	"	"	"	"	65	"	"	"	"
"	250	"	"	"	"	"	55	"	"	"	"
"	300	"	"	"	"	"	50	"	"	"	"

APPROACHING CROSSING FROM THE NORTH AND LOOKING EAST

At	50	feet	distant,	a	view	of	2,500	feet	can	be	obtained.
"	100	"	"	"	"	"	965	"	"	"	"
"	150	"	"	"	"	"	2,500	"	"	"	"
"	200	"	"	"	"	"	2,500	"	"	"	"
"	250	"	"	"	"	"	2,000	"	"	"	"
"	300	"	"	"	"	"	2,000	"	"	"	"

APPROACHING CROSSING FROM THE NORTH AND LOOKING WEST

At	50	feet	distant,	a	view	of	180	feet	can	be	obtained.
"	100	"	"	"	"	"	2,500	"	"	"	"
"	150	"	"	"	"	"	2,500	"	"	"	"
"	200	"	"	"	"	"	2,300	"	"	"	"
"	250	"	"	"	"	"	2,000	"	"	"	"
"	300	"	"	"	"	"	2,000	"	"	"	"

It thus appears that the shortest sight lines are approaching the crossing from the south. The shortest of these at a distance of 100 feet from the crossing is on the southwest corner, where there is an elevator building close up to the track; and on account of the spur which serves this elevator being located so as to permit loading and unloading from the doorways of the elevator, it would not be possible to make any rearrangement here without scrapping the structure.

On the southeast side, the view is obstructed by the station. At a distance of 100 feet from the crossing, there is a view of 248 feet. On the southwest side, the view is obstructed by the elevator already referred to. At a distance of 100 feet from the crossing, there is a view of 210 feet.

There are short lines of view on the south side. The shortest line of view is on the southwest side, where the elevator is located; but it is to be noted that the bell protection is on the south side and at the southwest corner. From the north side, there is a good view. Coming from the north and looking east, the view at 100 feet is 965 feet; but for a further distance from 100 to 300 feet back from the track the view runs from 2,000 to 2,500 feet. Looking west at 50 feet, there is a view of 180 feet; but for a further distance from 100 up to 300 feet back from the right-of-way, there is a view of from 2,000 to 2,500 feet.

The main feature of danger, it seems to me, arises from the restricted view at the southwest corner, this being the result of the location of the elevator building. There is, however, an electric bell; and with reasonable care this crossing is reasonably safe. The only suggestion I would make would be that the Municipality have its attention drawn to the advisability of installing an advance warning sign on the south side of the crossing at a distance of 300 feet from same. It will be noted that 300 feet from the south side of the crossing looking east the view is only 53 feet, while on the same side of the track looking west the view is only 50 feet.

OTTAWA, July 14, 1925.

Commissioner Boyce concurred.

Application for a ruling of the Board in the matter of a claim against the Grand Trunk Railway Company, Detroit, Mich., for refund of alleged freight overcharges on a carload shipment of lumber from Baptiste, Ontario, to Grand Rapids, Michigan, on a Bill of Lading dated December 23, 1921, and routed via C.N.R. and G.T.R., and two carloads from Fossmill, Ontario, November 11, 1921, to Detroit, Michigan.

File 9754.22

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Claim is made against the "Grand Trunk Railway, Detroit, Michigan," for refund of \$45.56 plus interest, being the amount alleged to be overcharged on a carload shipment of lumber from Baptiste, Ontario, to Grand Rapids, Michigan, on bill of lading dated December 23, 1921, routed via "C.N.R. and G.T.R."

The railway had charged in accordance with the tariffed through sixth class rate of 53 cents per 100 pounds, from Baptiste to Grand Rapids. The applicants' claim is based on there having been at the time a possible combination of 24 cents per 100 pounds from Baptiste, Ontario, to Sarnia, plus 18 cents from Sarnia to Grand Rapids, Michigan. There is also a complaint in regard to the shipment of two cars of lumber from Fossmill, Ontario, to Detroit, Michigan. On these shipments the applicants claimed there should apply a combination rate of $37\frac{1}{2}$ cents, made up of the rate of $26\frac{1}{2}$ cents, Fossmill, Ontario, to Point Edward, plus 11 cents, from Sarnia to Detroit. The through rate tariffed from Fossmill to Detroit at the time was $52\frac{1}{2}$ cents per 100 pounds. The claim made in respect of the two cars from Fossmill amounts to \$177.64.

Both of the shipments concerning which complaint is made moved in 1921. The shipments from Fossmill were made on November 11, 1921, and the shipments from Baptiste on December 23, 1921. The application is not one to declare what should be a reasonable rate for the future, but to find that the rates, in so far as they were in excess of the combination referred to, were unreasonable, and that refund should be made down to the basis of the combinations.

So far as a movement wholly in Canada is concerned, the Board has ruled "that it is a fundamental proposition, under the policy outlined by the Railway Act, that when a rate, whether joint or whether limited to points situated on one line of railway alone, has gone into force in conformity with the provisions of the Railway Act, it is the only legal rate in respect of the traffic mentioned and between the points mentioned." See *In the matter of Through Rates vs. Combination of Locals*, file 9754. Reference may also be made to *re Through Rates on Lumber exceeding the Sum of the Locals*, File 24647; *Board's Judgments and Orders*, Vol. IV, p. 264 at p. 265; *Complaint of F. L. Getzler, re Through Rates on Pig Iron, Welland to Montreal, exceeding the combination of class and commodity rates*, file 26848; and also *Application of General Traffic Service of Chicago, Ill., on behalf of Woods Mobilette Company, regarding combination of rates on automobile and parts moving from Winnipeg, Manitoba, to Harvey, Ill.*, file 26025.1.

Under these decisions the situation is that the through rate governs. It is open to attack a through rate in excess of the sum of the locals as unreasonable. Where the Board holds that the through rate in excess of the sum of the locals is unreasonable, its holding is effective for the future and has no retroactive effect.

A movement from a point in Canada to a point in the United States is subject to the provisions of section 338 of the Railway Act, which provides that "When traffic is to pass over any continuous route from any point in Canada to a foreign country, and such route is operated by two or more companies, whether Canadian or foreign, the several companies shall file with the Board a joint tariff for such continuous route." It was held in *Woods Mobilette Company* that the contention that the route could be made discontinuous and a combination of rates substituted if the through rates filed were not in harmony with the statute could not be upheld.

The applicants contend that the combination of rates would be applicable although the shipment was billed through and not billed forward to the Canadian point to which the Canadian factor of the combination relied on applied to, and rebilled therefrom on the American factor of the rate. Under Conference Ruling No. 256 of the Interstate Commerce Commission, dealing with a movement from a point in the United States to a point in Canada it is set out that "Upon a movement from a domestic point to a destination in Canada charges were assessed at a combination of rates, both factors of which were on file with this Commission but which made higher, than another combination over the same route one factor of which was on file with the Canadian Commission but not with this Commission; held that the Commission cannot award reparation on the latter combination."

In the disposition which the facts warrant it is in reality unnecessary to emphasize the difference between the provisions of the Railway Act in regard to refunds, and those of the Act to Regulate Commerce and subsequent amending legislation. Since, however, the applicant contended at the hearing that there was, at least, implied provision under the Railway Act to award refunds, reference may be made to various decisions. In *Canadian Condensing Company vs. C.P.R. Co'y.*, *Board's File 16376*, there had been a change in the minimum weight. The shipper made his arrangement on the basis of the old minimum, this working to his detriment in connection with a contract he had entered

into, held that the erroneous assumption as to the minimum applying did not justify a departure from the published tariff, and that no refund could be allowed. See also *G.T. and C.P.R. Cos., vs. Canadian and British American Oil Cos.*, 13 C.R.C., 201; also complaint of *F. L. Getzler*, above referred to. See also *Dominion Concrete Co'y. vs. C.P.R. Co'y.*, 6 C.R.C. 514. The Board has no power to make a retroactive alteration in the tariff and grant rebates and refunds of tolls which have been charged.

On the written submissions, and on what was submitted in evidence, the contention of the applicant that a through rate may be defeated as to a past transaction by a lower combination of locals, fails. The only additional point which the applicant raised at the hearing was in regard to routing. He stated that combination rates via North Bay applied on lumber moving from Fossmill to Detroit prior to the issuance of Ransom's tariff No. 13 (C.R.C. No. 44), effective February 29, 1920. The situation is, however, that at the time the shipments in question moved the tariff in question quoting a through rate applied.

The applicant laid stress on the fact that at the time the shipment moved there was no routing provided for in the tariff from Kilrush or Fossmill. The tariff, C.R.C. No. 44, above referred to, names a through rate from Kilrush to Detroit, and Fossmill while not shown in the tariff is the next intermediate station on the route via North Bay. As Fossmill is but seventeen miles from North Bay, routing via the latter point would be the shortest, and therefore the reasonable route in a movement to Detroit.

The application must be dismissed.

OTTAWA, July 21, 1925.

Commissioner Boyce concurred.

FREIGHT RATE INVESTIGATION

In compliance with the instructions to this Board contained in Order in Council P.C. 886, dated June 5, 1925, by which the Committee of the Privy Council made final disposition of the petition to the Governor in Council of the Governments of the provinces of Alberta, Saskatchewan, and Manitoba, by way of appeal from General Order No. 408 of the Board of Railway Commissioners for Canada, which Order in Council, among other things, recites that,—

“The committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada, and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade.

“The committee are further of the opinion that to give effect to this policy, and considering the submissions made by counsel and important trade organizations representing different provinces and localities in the Dominion as to the disadvantages that would be suffered by such provinces and localities by any partial or incomplete consideration of the freight rate structure, a thorough and complete investigation of the whole subject of railway freight rates in the Dominion should be carried out by the Board of Railway Commissioners, the body constituted by Parliament with full powers under statute to fix and control railway rates.

"The committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the great grain-growing provinces of the West, on which development the future of Canada in large measure depends, it is desirable that the maximum cost of transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour, as at present in force under the Crowsnest Pass Agreement, should not be exceeded.

"The committee are further of the opinion that, before such investigation is undertaken it is essential to ensure that the provisions of the Railway Act in reference to tariffs and tolls, and the jurisdiction of the Board thereunder, be unfettered by any limitations other than the provisions as to grain and flour hereinbefore mentioned.

"The committee therefore advise that the Board be directed to make a thorough investigation of the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and in particular to:

- "(a) The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;
- "(b) The encouragement of the movement of traffic through Canadian ports;
- "(c) The increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama canal."

The Board of Railway Commissioners for Canada, in order to effect and carry out as expeditiously as possible the directions of the above in part recited Order in Council, keeping in view the specific instructions contained therein, hereby requests the public, both as individuals and organizations, as well as provincial, municipal and civic authorities, boards of trade, chambers of commerce; trade, industrial and labour organizations; firms, companies and individuals, including shippers and carriers, as follows:—

- (a) To submit to the Board any statement of facts under which it is claimed that unjust discrimination, or undue preference, or unfair treatment exists in connection with the rates of freight charged upon any commodities; or in the treatment of any person, city or province by any railway company;
- (b) To set forth the grounds upon which it is claimed on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;
- (c) To make submission as to the encouragement of the movement of traffic through Canadian seaports.

It is recommended that all submissions filed pursuant to the above suggestions be printed or legibly typewritten, and at least twenty copies thereof be forwarded to the Secretary of the Board at Ottawa, not later than the 15th day of August, 1925. All statements and memoranda so filed will be open to public

inspection at the office of the Secretary of the Board. Persons inspecting the same will be permitted to take copies thereof, and to reply thereto by statement filed with the Secretary of the Board not later than the 1st day of September, 1925. Not less than twenty copies to be filed. All memoranda and statements filed in pursuance of the above are for the consideration of the Board in the matters involved, being intended as an aid and guidance to the Board in its investigation, but are not to be received in lieu of evidence upon the matters therein dealt with.

Testimony now before the Board in cases already heard and in which no decision has been given is not to be repeated. New and material evidence in such cases may be submitted in the usual way.

The purpose of the above request is to put the Board, as early as possible, in possession of any and all complaints against the existing rate structure which may be put forward for its consideration in the investigation to be held pursuant to the directions contained in the Order in Council; and to specifically direct the attention of the Board to the subject matter of such complaints, with a view of considering what changes, adjustments and redistribution in rate incidence, in accordance with the law, may be necessary to correct the defects complained of; and to secure to the fullest possible extent the equalization of freight rates, so as to deal equitably with all parts of Canada; as well as to facilitate the interchange of commodities between various portions of the Dominion and to encourage industry and agriculture and the development of export trade.

The Board desires to enter upon such investigation with the least practicable delay, and to conduct the same in a manner most calculated to secure a complete and systematic development of all facts material to the inquiry with a minimum disturbance to business and traffic conditions generally.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, July 9, 1925.

GENERAL ORDER No. 419

In the matter of freight rates and the amending legislation of 1925, being Chapter 52 of the Statutes of Canada, 15-16 George V.

File No. 32812.1

WEDNESDAY, the 8th day of July, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon its being held by the Supreme Court of Canada, in its decision of February 26, 1925, that the Board had no jurisdiction conferred upon it by the Railway Act to authorize railway rates upon the railway of the Canadian Pacific Railway Company, in excess of the maximum rates referred to in the Crownsnest Pass Act, being chapter 5, 60-61 Victoria, Statutes of Canada, and in the Agreement therein referred to, upon the commodities therein mentioned;

And upon its being further held by the Supreme Court of Canada that, under the existing legislation, the rates above referred to were limited as respects

commodities westbound, to traffic originating at Fort William and at such points east of Fort William as were at the time of the passing of the Crowsnest Act, and (or) of the making of the agreement on the company's line of railway;

And upon the amendment of the Railway Act in the year 1925, chapter 52, 15-16 George V, and of removal thereunder by Parliament of the statutory maxima hitherto applicable in respect of the commodities westbound aforesaid;

And upon its appearing that the continuation of the situation whereunder points not situated on the company's line of railway at the time of the making of the agreement are charged higher rates than those which apply to traffic moving westbound from points on the company's line of railway at the time of the making of the agreement, creates, in the absence of statutory maxima to the contrary, an unjustly discriminatory and unduly preferential treatment against points not situated on the company's line of railway at the time of the making of the agreement in favour of those so situated,—

It is ordered: That, on the commodities aforesaid, the Canadian Pacific and the Canadian National Railway Companies restore, effective within fifteen days from the date of this order, the rates which were in force on July 6, 1924.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 420

In the matter of freight rates and the amending legislation of 1925, being Chapter 52 of the Statutes of Canada, 15-16 George V.

File No. 32812.1

WEDNESDAY, the 8th day of July, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Whereas the said chapter 52, 15-16 George V, amending section 325 of the Railway Act, 1919, provides, *inter alia*, that rates on grain and flour shall be governed by the provisions of the agreement made pursuant to chapter 5 of the Statutes of Canada, 1897, but that such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament,—

The Board therefore orders: That railway companies subject to the jurisdiction of Parliament file such tariffs, effective within fifteen days from the date of this order, as may be necessary to implement the provisions of the said section 325 of the Railway Act, 1919, as amended.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36575

In the matter of the application of the Canadian National Railways for permission to file revised mileage rates on stoves, on less than statutory notice.

File No. 548.38

FRIDAY, the 10th day of July, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that through error in transferring mileage rates on stoves from tariff C.R.C. No. 496 to tariff C.R.C. No. E-940, the mileage rates on scrap iron were published in error,—

The Board orders: That the Canadian National Railways be, and they are hereby, permitted to file upon one day's notice a supplement to tariff C.R.C. No. E-940 to correct the error.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 36592

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," for a further extension of time within which the existing station limits rule (Special Instruction "E") may be continued in the working time tables.

File No. 4135.26.2

MONDAY, the 13th day of July, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the matter as to the operation now carried by Special Instruction "E" being under the consideration of His Excellency-in-Council, it is desirable to maintain matters in *statu quo*,—

The Board therefore orders: That the time within which the necessary changes and instructions to employees of the applicant company, to observe the Uniform Code of Rules for Canadian Railways approved by General Order No. 42, dated July 12, 1909, may become effective, be, and it is hereby, further extended until the appeal pending before the Privy Council is disposed of.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 36593

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for a further extension of time within which the existing station limits rule (Special Instruction "E") may be continued in the working time tables.

File No. 4135.26.1

MONDAY, the 13th day of July, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the matter as to the operation now carried by Special Instruction "E" being under the consideration of His Excellency-in-Council, it is desirable to maintain matters in *statu quo*,—

The Board therefore orders: That the time within which the necessary changes and instructions to employees of the applicant company, to observe the Uniform Code of Rules for Canadian Railways approved by General Order No. 42, dated July 12, 1909, may become effective, be, and it is hereby, further extended until the appeal pending before the Privy Council is disposed of.

S. J. McLEAN,
Assistant Chief Commissioner.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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*Application of the Dalyle Electric Limited, of Guelph, Ont., for a reduction in
L.C.L. classification of electric lamps*

File 19367.34

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Incandescent electric lamps are rated double first class L.C.L., Canadian Freight Classification. The rating in question has been in existence since January 1, 1896. This, of course, is not necessarily conclusive, but it is to be noted as a fact of record. The rating of one and one-half times first class L.C.L. is applied for. This is the rating of the American classification.

As has been pointed out in many cases, citations of rate or classification practice in the United States are not necessarily conclusive in respect to conditions existing in Canada, unless the conditions are on all fours. It may be noted in passing that while there is this difference on L.C.L. the Official and Western Classification territories have carload ratings of first class, while under the proposed Classification No. 17 second class is provided for in Canada.

It is not understood that there is any allegation that the difference between the L.C.L. ratings in Canada and the United States is detrimental to Canada in that it enables an American product to compete more effectively in Canada. Applicant stated that the American competition was not serious.

It was argued in favour of the change that there have been changed conditions, first, in regard to increased strength of the lamp. Formerly, the lamps had tips; it is stated that the tipless type now manufactured is much less fragile. So far as broken filaments are concerned, it is to be noted that the lamps in question are carried at owner's risk of breakage, and the railways, therefore, paid nothing in respect of broken filaments. Where there was an actual breakage of the lamp, the evidence was that the railways had paid claims, because this was a pretty clear indication of negligence due to rough handling. On the evidence submitted, it is not apparent that there has been any very appreciable change in regard to the amount of claims involved.

It is stated that one change to be considered is that of improved packing methods. At present, the packing is in corrugated fibreboard boxes. Formerly, the lamps were shipped in wooden boxes which are stated by the railways to afford a much heavier and stronger case than the fibreboard box now being used. On the evidence submitted by the Canadian Freight Association, it appears that on shipments made by the Canadian Tungsten Lamp Company in 1910, where the wooden boxes were used, there was a gross weight of 9 pounds per cubic foot. Shipments from the Laco-Phillips Company in 1913 in fibreboard boxes showed an average weight of 5.9 pounds per cubic foot. Another statement of recent shipments from the Canadian General Electric Company showed an average weight of 5.15 pounds per cubic foot. The applicant stated their shipments as a whole, in the fibreboard boxes, would average 3.75 pounds per cubic foot.

On what is submitted, it would appear that the wooden container was heavier; that the weight per cubic foot was greater; and that as the transportation charge was based both on the weight of the container and contents, the percentage of revenue to value of the article must have been greater under the old conditions.

While this is true of the earlier period, the figures do not indicate, so far as bulk and weight are concerned, any material change in the last fifteen years of a character that would warrant change in classification rating based upon change in the type of container made use of.

It is also contended by applicant that there has been a very considerable reduction in value, and that since 1920 there has been a reduction of 35 per cent on tungsten lamps and 50 per cent on gas-filled lamps. The evidence here was uncertain as it showed fluctuating prices. Mr. Ransom, of the Canadian Freight Association, filed an exhibit covering 16 and 32 candle-power carbon lamps, which were selling wholesale, in 1910, for 13.2 and 22 cents each, respectively. A letter on the Board's file from the Laco-Phillips Company dated July 3, 1914, quoted retail prices of carbon lamps at that time as between 10 and 15 cents each; metallised carbon filament lamps from 15 to 20 cents each; and most of the tungsten lamps at prices between 40 and 50 cents each. In a letter addressed to the Board by the Canadian Laco-Phillips Company under date of November 19, 1915, they stated the prices for the principal sizes of tungsten lamps had been reduced to 30 cents. Mr. Ransom filed an exhibit covering some shipments in July, 1914, showing the 40-watt lamp as retailing at 25 to 27 cents each at that time. He also filed an exhibit covering current prices, showing 10- to 40-watt tungsten lamps listed at retail prices of 32 cents each, and the 60-watt lamp at 37 cents. Mr. Howlett, representing the applicant, challenged the accuracy of these latter figures and stated that their lamps are retailing at 5 for \$1.

Retail prices in the city of Ottawa, for example, show that while Dalyle lamps manufactured by the applicant are retailing at 5 for \$1, in case of the 25-watt lamps, lamps of other makes, for example, the "Mazda" and "Hydro", are selling at 32 cents; the "Maple Leaf" at 25 cents; and the "Condor" at 35 cents. While there have been variations in prices, apparently there is no great difference between the current prices of to-day and those of ten years ago.

An exhibit introduced by the Canadian Freight Association pointed out that the change asked for would, so far as the transportation charge is concerned, be very slight. The inference from this is that the change of rating would make no appreciable difference to the consumer. In the exhibit in question, it was pointed out that on a shipment from Guelph to Windsor it would take approximately 13 lamps to make one cent of difference in freight charges; to Toronto, 24 lamps; to St. John and Halifax, 8 lamps, and to Winnipeg, 3 lamps.

This, again, is not necessarily conclusive of the reasonableness of the existing arrangement. If a rate or rating is unreasonable in itself, then the question of

the incidence of the reduction is not a conclusive answer. However, the figures given illustrate a condition which is not new. Rate or classification reductions, if they are small, have great difficulty in getting down to the consumer; and, even if the changes are more considerable, a good part of them is apt to stick in some portion or portions of the cogs of the distributive machinery on the way to the final consumer.

The arguments advanced by the applicant have been considered and do not show such a change of conditions as would justify the change in rating asked for. It has also to be borne in mind that various other firms concerned in the manufacture and distribution of this product, who would be expected to have made appearances if they found themselves detrimentally affected by the existing Classification rating, are not before us on this record.

July 17, 1925.

Chief Commissioner McKeown concurred.

Application of the Canadian National Railways for approval of revised plan showing proposal of crossing of public road allowance (county road) between Concessions 4 and 5, Lots 33 and 34, Township of Pittsburgh, County of Frontenac, east of Findley, Ontario.

File 33377

Heard at Kingston, Ontario, June 20, 1925.

JUDGMENT

COMMISSIONER BOYCE:

By Order No. 35031, dated May 8, 1924, the railway company, upon the consent in writing endorsed on the plan, was granted permission to construct a passing track at Findley across the public road allowance between lots 30 and 31, concession 4, in the township of Pittsburg (a township road).

Subsequent to issue of this order the railway company, under date September 3, 1924, advised the Board that the township of Pittsburg as a condition of its consent required the railway company to install and maintain a bell and wigwag protection device, which the company was not prepared to do, and the company therewith enclosed new plans showing the proposed track crossing the road between concessions 4 and 5, which is a county road under the jurisdiction of the County Council of the County of Frontenac.

The proposed track, as shown on plan filed, is 4,600 feet long, and is by the plan desired to be substituted by the company for that covered by Order No. 35031, moved eastward so as to commence east of the road between lots 30 and 31, and, therefore, not traversing that road. The Board is asked to sanction the latter plan, involving a crossing of the county road between concessions 4 and 5. The crossing originally applied for and authorized by No. 35031 is not required, and the order is ineffective and should be rescinded.

The County Council of Frontenac, under date November 20, 1924, passed and, through its solicitors, laid before the Board the following resolution evidencing its attitude as regards the proposals of the railway as to crossing the county road at this point.

" KINGSTON, ONT., November 20, 1924.

" *Good Roads Committee.*

" 1. Moved by Councillor Sibbit and seconded by Mr. Graham,— That the Good Roads Committee of Council recommend that in the matter of the new Canadian National Railway crossing over a county road near Findley station, township of Pittsburg; that owing to the fact that this is a dangerous crossing, that a wigwag light and a bell be erected at said crossing and a 5 per cent grade on both sides of the railroad track, and proper drainage be provided. That railway cars be not allowed to stand on railway track on east side of crossing nearer than 350 feet and 200 feet on west side. That this matter be left in hands of Mr. Farrell, County Solicitor.—Carried.

" Certified a true copy.

" (Sd.) J. W. BRADSHAW,

" *Clerk, County of Frontenac.*

The question involved is as to protection of the highway traffic as against the danger involved by the additional track. The intersection of the highway with the railway forms a diagonal "skew" crossing, which is a factor of danger emphasized by counsel for the County Council as necessitating protection, the form of which, it is suggested, should be an automatic bell and wigwag signal if the crossing is to remain, but it was suggested that it be eliminated by diversion of the highway at the expense of the railway company.

The highway traffic is shown for four hours, April 1 (6 p.m. to 10 p.m.), and for twelve hours April 2 last (6 a.m. to 6 p.m.)—a total of sixteen hours. There is no contention that the return was not representative of the average highway traffic tributary to this crossing. It is as follows for the whole sixteen hours:—

Vehicular	58, or an average of 3.62 per hour.
Pedestrian	24, or an average of 1.5 per hour.

So that it is apparent that, at present, the crossing is little used and there is no suggestion of traffic congestion.

The view at the crossing from the highway is as follows:—

<i>Approaching the Crossing from the West</i>			
Eastbound trains		Westbound trains.	
$\frac{3}{4}$ mile	at 50 feet	1,800 feet	
$\frac{3}{4}$ mile	at 100 feet	1,800 feet	
$\frac{3}{4}$ mile	at 150 feet	1,800 feet	
<i>Approaching the Crossing from the Southeast</i>			
Eastbound trains		Westbound trains	
1 mile	at 50 feet	1,300 feet	
1,500 feet	at 100 feet	*750 feet	
1,500 feet	at 150 feet	*750 feet clear and	
		one mile if view	
		is taken south of	
		house standing	
		close to track.	

* Further clear view obstructed by sectionman's house.

It is also apparent that the crossing is a fairly open one as to view, and, except at the southeast, where at 100 feet and 150 feet from the crossing, as to traffic approaching from the southeast, the view is limited to 750 feet by sectionman's house, presents no difficult or dangerous features to a careful user of the highway.

The diversion of the highway would involve, according to the estimates furnished by the company, an outlay of \$10,790. At the present time, at least, and having regard to present condition and traffic, it is not necessary to consider this proposal, which was not seriously pressed upon us at the hearing.

Before the hearing I had an opportunity, in company with the Assistant Chief Commissioner, and engineers of the Board and the company, of inspecting the crossing and of judging, on the ground, what the effect of the extra track would be on the highway traffic at present involved.

Without the proposed passing track, there is, I think, no need for any protection. The highway traffic is very light, the view is good, and although it is a diagonal crossing of double tracks over which high-speed trains are operated, it presents no such dangers as would, in the circumstances, not be fully met by ordinary caution of those using the highway.

The proposed track is on the southerly side of the railway. No additional risk is involved to highway traffic approaching from the northerly side. The view and conditions at the crossing remain unimpaired as to such traffic by the operation of the extra track to the south of the main line tracks. No accident is reported to have occurred at this crossing.

Only against traffic approaching on the highway from the southerly, or southeasterly direction would the proposed track call for consideration as to protection. The view of the main tracks might be obstructed by standing cars which would be an element of danger. This situation, with all its contingencies, has been carefully considered after investigation and survey on the ground by the Board's engineers, operating officials, and members of the Board who heard the case discussed in Kingston.

I think that any danger to highway traffic, as at present recorded, will be sufficiently guarded against by the following provisions, viz:—

1. That no cars shall be left standing on the passing track nearer to the highway crossing than 350 feet on the east and 250 feet on the west side of the crossing;

2. That the company shall extend and put in good order the east approach to the crossing, which is on the south side of the track;

3. That when a train is standing on the passing track it shall be the duty of the company to insure the protection of the entire crossing by one of the crew of that train acting as flagman during the whole of the time that the passing track at the crossing, or within 350 feet to the east and 250 feet to the west of it, is occupied by such train. The protection during such period to be effective as well to the passing track as against all movements of trains on both the main line tracks.

Subject to the above restrictions and conditions, and so long as the same shall be respectively observed and performed, the company may connect up the passing track across the county road, between concessions 3 and 4, lots 33 and 34, in the township of Pittsburg, and may use and operate the same.

All work to be approved by an engineer of this Board.

Order No. 35031, referred to above, will be rescinded.

The County Council should erect, immediately, and maintain in effective condition, on the roadway on each side of the crossing, at a distance of 300 feet therefrom, highway warning signs of the standard approved by the Board. These can be procured by application to the Chief Engineer of the Department of Highways of the Ontario Government at Toronto at a very small cost. There will be no order as to this, as the Board's jurisdiction to order the erection of warning signs on the highway distant from its intersection with the right of way of the railway is, I think, very doubtful. The county municipality owes some duty for the protection of its highway traffic, even though it be senior to the

railway, and doubtless in this, as in many other cases of a similar nature, the County Council will cheerfully and promptly co-operate by furnishing and maintaining this auxiliary protection.

With the above provisions, and as regards present conditions of traffic, I think the crossing will be sufficiently protected.

Order will go accordingly.

OTTAWA, July 21, 1925.

Assistant Chief Commissioner McLean concurred.

ORDER No. 36639

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under section 276 of the Railway Act, 1919, for permission to open for the carriage of traffic mileage 171.79 to 207.34 of its Moose Jaw Southwesterly Branch (Assiniboia to Consul), in the Province of Saskatchewan.

File No. 16480.35

THURSDAY, the 23rd day of July, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board and the affidavit of the applicant company's assistant chief engineer at Winnipeg that in his opinion the said portion of the applicant company's Moose Jaw Southwesterly Branch is sufficiently completed for the safe carriage of traffic,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway, Moose Jaw Southwesterly Branch (Assiniboia to Consul), from mileage 171.79 to mileage 207.34, in the province of Saskatchewan.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of Railway Commissioners for Canada

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Complaint of the Towns of Riverside, Tecumseh, et al, against the division of Exchange territory made by the Bell Telephone Company in the district surrounding Windsor and the proposed increase in rates.

File 3574.273

Heard at Windsor, Ontario, June 17, 1925.

JUDGMENT

COMMISSIONER BOYCE:

Application was made, under date October 14, 1924, by the Municipal Corporation of the Town of Riverside, in the county of Essex, Ontario, for an order, "under section 375, subsection 6, of the Railway Act, ordering the Bell Telephone Company of Canada, Limited, to include the whole of the said town of Riverside within the Windsor Base area served by the Burnside and Seneca Exchanges for Windsor and Walkerville by extending the boundaries of the said Base area, and restraining the Bell Telephone Company of Canada, Limited, from dividing the town of Riverside into two exchanges and placing that part of the town of Riverside east of the Lauzon road, in an exchange with the town of Tecumseh as is proposed by it," upon the grounds stated in the application.

The application was supported, or endorsed by, the Essex Border Utilities Commission, by a resolution dated October 15, 1924, and filed with the Board. The resolution requested the Board "not to permit the separation of the service until such time as an expert study of the traffic has been made, with a view of determining the flow of communication." The Border Utilities Commission was not represented at the hearing.

The towns of Tecumseh, Walkerville, and Sandwich and the township of Sandwich East supported the application, and, with the city of Windsor, were represented by counsel at the hearing.

So far as this application is based upon the section of the Railway Act referred to therein I am unable to see any such jurisdiction in the Board given by the section cited in the application as would support it. Section 375, subsection 6, of the Railway Act is clearly irrelevant to the relief sought. The application, in so far as it seeks a restraining order, can only invoke what jurisdiction the Board possesses under section 33, subsection (2), viz., "to forbid the doing or continuing of any act, matter or thing which is contrary to this Act, or the Special Act., etc."

This Board's jurisdiction under the Railway Act, over telephone companies, is essentially and solely a rate jurisdiction. The "facilities" sections of the Railway Act are specially excepted from its powers as to telephone companies by section 375 (12) of the Railway Act. That this Board has uniformly adhered to this principle is manifest in the following, amongst other, of its decisions, viz:—

Tinkess v. Bell Telephone Co., 20 C.R.C., 249.

Town of Dundas *et al* v. Bell Telephone Co., Vol. XI, Bds. Judgts., p. 83.

B.C. Municipalities' Complaint *re* new Exchange established at Kerrisdale, B.C. Board's Judgments, etc., Dec. 1, 1921 (Vol. XI, p. 325).

Complaint of Corporation of the District of Saanich, B.C., and the Cadboro Bay Committee, Cadboro Bay, B.C., *re* proposed extension of the Gordon Head Telephone Exchange, by including Mt. Tolmie and Cadboro Bay Districts, British Columbia Telephone Co. Board's Judgments, etc. (1925), Vol. XV, p. 63, and cases therein referred to.

This was pointed out at the hearing to the applicants, as the following citations from the record, Volume 441, will show (p. 1021):—

"Commissioner BOYCE: Then it is purely a question of rates, is it not?

"Mr. FURLONG: It is a question of rates and service. We cannot get the service with the exchange they put in.

"The ASSISTANT CHIEF COMMISSIONER (presiding): You must remember that the Board's jurisdiction is a rate jurisdiction only.

"Commissioner BOYCE: Absolutely. What they have done in the way of extra facilities, we have nothing to do with. Our jurisdiction is confined solely to telephone rates. The question is, whether they can justify as a rate proposition what they have done. The onus, therefore, would be upon the telephone company.

"Mr. FURLONG: I think so."

(P. 1031):—

"The ASSISTANT CHIEF COMMISSIONER: As Commissioner Boyce has very pertinently pointed out, this Board has no control over the question of telephone service; it only has control of rates. It seems to me to boil itself down to this: are the rates which it is proposed to put into force in Tecumseh reasonable, or are they unreasonable?"

(P. 1053):—

"Commissioner BOYCE: You are not now addressing yourself to this original complaint. There is no jurisdiction under the statute that has been pointed out.

"Mr. FURLONG: No. *I think our whole remedy now is on the question of rates.*"

It is clear then that as regards the application as framed, which is concerned with complaints as to, or consequent upon, the division of boundaries of the Windsor Exchange area, from the ruling of the Assistant Chief Commissioner, presiding at the hearing, in which I concurred, and do now concur, based upon the authorities I have cited, and from the admission of counsel for the applicant, the Board has no jurisdiction to grant any of the relief asked for in that application. The parties were allowed to proceed with the hearing as a complaint as to the reasonableness of the rates proposed in the tariffs filed to be charged in the revised exchange areas affected and in line with what was said, *per curiam*, in the judgment of the Board in the Cadboro Bay Case, counsel for the telephone company on the suggestion of the Board, and without demur or

argument, voluntarily assumed the onus of establishing that the rates in the tariffs filed for the revised exchange areas were just and reasonable.

Prior to the division of exchange areas decided upon and affected by the telephone company Tecumseh and Riverside and all territory east thereof were served by and were within the Windsor Base area. The service was largely through rural party lines, and with the rapid growth of Windsor and of the outlying and rural sections tributary to Riverside and Tecumseh the company decided it could better serve these outlying sections by establishing an exchange at Tecumseh. The company was supported in this decision by the following letter from the Municipal Corporation of the Town of Tecumseh:—

“MUNICIPAL CORPORATION OF THE TOWN OF TECUMSEH

TECUMSEH, ONT., October 13, 1924.

“Mr. F. W. DEWAR,

“Manager Bell Telephone Company,

“Windsor, Ont.

“DEAR SIR,—Herewith is a copy of a resolution passed by the Municipal Council of the Town of Tecumseh at a meeting held on the 8th instant.

“Moved, seconded and carried, that this council is in favour that the Bell Telephone Company establish a telephone exchange in Tecumseh and that a copy of this resolution be forwarded to Mr. Dewar urging him to rush the installation.

“Very truly yours,

“E. U. DUGAL,

“Clerk of Tecumseh.”

The object was to relieve the traffic load of the Windsor Exchange and give, as was desired, a better service to the rural sections than attached thereto. Before the new exchange at Tecumseh was established there were 85 subscribers in the Tecumseh section; the number of new subscribers is 51, and contracts in hand yet to be served 24—a total of 160 subscribers—so that the number of subscribers was about doubled in that section by the establishment of the Tecumseh Exchange. The above figures include that part of Riverside going back to Lauzon road, which intersects the territorial limits of the town of Riverside. The population of Tecumseh and Riverside, respectively, is said to be 1,700 and 1,500, respectively, many of the latter being, it is said, seasonal residents from Detroit occupying summer residences.

Before the Tecumseh Exchange was established the exchange rates in that territory were governed by the Tariff C.R.C. No. 5320, issued April 14, 1921, effective April 22, 1921, and were as follows:—

A. Within the Municipal limits of Windsor and Walkerville, Ontario, as they existed as of January 1, 1916 (per mensem):—

	Industrial Line Station	Two-party Line Station	(a) Four-party Line Station
Business	\$3.08	\$2.46	\$2.05
Residence	2.57	2.05	1.85

(a) Applicable outside the Base Rate area only with excess mileage. See “B.”

B. Outside the Base Rate area indicated in “A” and within Exchange area:—

Individual and Party Line Stations	Rural Line Station	
The rates for main stations are those in “A” plus	(a)	(b)
excess mileage charges.	\$2.05	\$2.57

By their Tariff C.R.C. 5753, issued November 7, 1924, effective December 8, 1924 (being the tariff in question), the company proposed the following scale of charges applicable to the new Tecumseh Exchange, viz. (per mensem):—

A.	Individual Line Stations	Two-party Line Station.
Business	\$2.05	\$1.85
Residence	2.05	1.85
B. Outside the Base Rate area indicated in "A" and within the Exchange area:—		
Individual and Party Line Stations		Rural Line Stations
The rates for main stations are those shown in	(a)	(b)
"A" plus excess mileage charges	\$1.54	\$3.05

The reductions in tolls to local subscribers, effected by the last cited tariff, are apparent and are substantial, viz:—

(a) On individual line station, business 'phones, a reduction of \$1.03 per month, and on residence 52 cents per month.

(b) On two-party line station, business, a reduction of 61 cents per month, and on residence a reduction of 20 cents per month.

(c) On four-party line station, business, a reduction of 51 cents per month, and on residence a reduction of 31 cents per month.

With the concentration of formerly scattered lines afforded, at the Tecumseh Exchange at substantially reduced rates to subscribers of that exchange there can be little question as to the reasonableness of the action of the company in establishing that exchange. Its aim is, while relieving the congestion of the Windsor Exchange caused by the wide and unwieldy area embraced in it, to afford better service to the outlying areas, in growing sections, and this, I think, has been accomplished.

In addition to the above tolls, and as a consequence of the separation of the Tecumseh territory from the Windsor area, and its constitution as a separate exchange area, a toll charge of 10 cents to Windsor Exchange is applicable. This is the minimum long distance toll, and although objected to, the objection to it cannot, under the circumstances, be maintained. It is, in the circumstances, reasonable and just.

Objection was taken by counsel for Riverside that the westerly limit of the Tecumseh new area was Lauzon road, running through the town of Riverside, so that the westerly side of the road was in one exchange and the easterly side in the new—thus imposing a toll charge between two sections of the town. Doubtless such an arrangement of boundaries of telephone exchange areas has its disadvantages, in this case not so great as would appear, because the town is of large area, and its population small, scattered, and there are many temporary residents. But, as has been pointed out, the Board's powers are limited as regards telephone companies to tolls, and no order it could make within its jurisdiction could remedy this arrangement, and I am unable to find that it can have any effect upon the reasonableness of the rates which was the issue before us. Doubtless this situation will right itself by the natural growth of the town, impelling the telephone company, when the traffic justifies it, to rearrange its exchange area boundaries to the greater satisfaction of the town of Riverside.

Much was said as to the influence of the large population of the city of Detroit and its environs upon the frequency of calls, and, as argued, its consequent factor in the question of rates. As pointed out by the Assistant Chief Commissioner at the hearing, and in agreement with him, I do not consider that foreign traffic can be taken as a factor in determining the reasonableness of tolls under the Railway Act. Neither am I prepared to say that, when weighed, that factor could dislodge the reasonableness of the tolls imposed by the traffic now in question.

The principles laid down by the Board in the Tinkess Case, herein cited, and in other cases referred to, are clearly applicable in the present case and should be affirmed and applied as apposite to present conditions. What was said in that part of the judgment in the Cadboro Bay Case, written by me, as to the onus of proof as to reasonableness of rates in cases like that then under consideration, and which is similar to present conditions, and which was not

concurred in by a majority of the Board, has been voluntarily adopted by the company which, at the hearing, assumed the onus of reasonableness of rates and discharged it, without any evidence dehors that reasonableness being tendered by or on behalf of any of the applicants. The rates in the tariff complained of are, in my opinion, in themselves reasonable and just, and their tendency is downward, and they are, in comparison with other tolls for similar services in many similar areas, just, reasonable, and proper, and under present conditions of service ought to be allowed as of the date the tariff became effective; that is, from the date the Tecumseh Exchange became operative.

Collection of tolls under the tariff was suspended by the company upon the suggestion of the Board, upon the complaints being lodged, it being understood that the suspension was not to deprive the company of these revenues should the tariff be sustained. The company suspended collection of the rates in the tariff, keeping account of the business and calls. The tariff being now sustained, any further obligation on the company, as to suspension of collection, is discharged, and it will be at liberty to collect these tolls, under the tariff, as if there had been no suspension, voluntary or enforced, of the collection thereof.

The formal application to the Board is, as I have pointed out, and as counsel for the applicants concedes; beyond the jurisdiction of the Board, and no order can be made upon it. The telephone company, however, assumed the onus of showing that the tariff was reasonable and has discharged that onus. Nothing, therefore, remains but to dismiss the application and order will go accordingly. The company will now be at liberty to make its collections of tolls under the tariff, collection of which the company suspended under the conditions I have mentioned, for services given under the tariff, as if such collection had never been suspended.

OTTAWA, August 12, 1925.

Assistant Chief Commissioner McLean concurred.

ORDER No. 36651

In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement "C" to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.79.

WEDNESDAY, the 5th day of August, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Whereas notice of the application has been given by the Express Traffic Association of Canada in the *Canada Gazette* and to the mercantile organizations enumerated in the General Orders of the Board Nos. 271, 348 and 353,—

Upon reading what has been filed in support of the application and on behalf of the Canadian Manufacturers' Association and the Toronto Board of Trade, and upon the report and recommendation of the Chief Traffic Officer,—

The Board orders: That the said proposed Supplement "C" to the Express Classification for Canada No. 6, as amended and submitted with letter dated July 23, 1925, from C. N. Ham, Chairman of the Express Traffic Association of Canada, on file with the Board under file No. 4397.79, be, and it is hereby, approved; the said supplement to be published as the Supplement No. 4 to the Express Classification for Canada No. 6.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36656

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Kipp Northeasterly Branch from mileage 0 to mileage 27.15, in the Province of Alberta.

File No. 16422.16

MONDAY, the 10th day of August, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Kipp Northeasterly Branch line from mileage 0, near Kipp, to mileage 27.15, at Turin, in the province of Alberta; provided the speed of trains from mileage 0, near Kipp, to mileage 6, at Diamond City, on the said branch line, shall not exceed the rate of fifteen miles an hour.

S. J. McLEAN,

Assistant Chief Commissioner.

GENERAL ORDER No. 422

In the matter of the General Order of the Board No. 201, dated August 1, 1917, prescribing a code of Car Demurrage Rules; and in the matter of Section 191 of the Canada Grain Act.

File No. 1700

THURSDAY, the 13th day of August, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said General Order No. 201, dated August 1, 1917, be, and it is hereby, amended by adding to Exception 1 of Rule 3 the words, "During the months of September, October, and November."

S. J. McLEAN,

Assistant Chief Commissioner.

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No. 13

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Application of the Corporation of the City of Ottawa re level crossing over the Canadian Pacific Railway and Canadian National Railway tracks connecting Pine and Oliver streets.

File 33679

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

By Order No. 36193, of March 16, 1925, there was reserved for consideration the question of the apportionment of cost of construction and maintenance of the crossing over the Canadian National Railways; and written submissions have been received.

It was stated by counsel for the city at the hearing that Pine street is covered by a plan filed in 1875, while the predecessor in title of the Canadian National did not construct until a subsequent date. On the record, there is no dispute on this matter. The question in issue is what, if any, rights from point of seniority accrue to the city in connection with the plan registered in 1875.

Counsel for the railway contends (a) that dedication by plan or otherwise and (b) user by the public, both of these occurring prior to the construction of the railway, are determinative of seniority of the highway; but that where there was only the filing of the plan and no user by the public the contention is that there was no highway at all. In support of this, he cites *Toronto vs. G.T.R.*, 2 O.W.R., also *Shoebrink vs. Canada Atlantic Ry. Co.*, 16 O.R., 515.

As summarized by counsel for the railway, the findings and the outcome in the latter case were as follows:—

1. In 1871, the owner of the land laid out a portion in town lots and showed certain streets.
2. Most of the lands were fenced in and reserved for pasture.
3. Under the Act, a mere survey and registration of a plan showing streets is *not sufficient* to make them public streets or highways.
4. No public money has been expended on the street, nor has statute labour been performed.
5. There was no evidence of user of O'Connor street between 1871 and 1881.

Counsel for the railway relies upon *City of Hamilton vs. T.H. & B. Ry. Co.*, 27 Can. Ry. Cas., 361, at p. 363; also *Sasman vs. Canadian National*, 20 Can. Ry. Cas., 246.

It is admitted by counsel for the railway that if the street in question had been a road allowance shown on the plan filed by the Crown at the time of the original grant, or if it had been asserted by the Crown that they came within the 5 per cent allowance for highways, the situation might be different, and that under the *Hamilton Case* the city might establish there was a highway; but it was contended that in the present instance where they rely only upon the filing of the plan by the subdivider of the property with absolutely no action taken by the city or other municipal authorities to make it a street *in fact* for thirty or forty years after the railway was constructed, the authorities are clear there is no street, and that if now opened up it would be junior to the railway.

The Board has made very clear its position in regard to road allowances. In *Municipality of Sasman* above cited, at p. 248, it was pointed out that where there is a road allowance and after the construction of the railway it is desired to open up such road allowance, the railway is junior.

"The company, as a matter of fact, gets no title in a road allowance. It obtains under the Act the right to cross it. This applies in so far as all road allowances, existing at the time the railway is constructed, are concerned, whether the road has been built or not. The title is in the Crown or in the municipality as the case may be, and when it is desired by the proper authority to make and open such a highway, no matter how long the railway may have been constructed, in my mind there is no doubt but that the railway ought to be considered as junior, and, therefore, ought to put in and maintain the necessary highway crossing, in cases where such crossings are found to be necessary and compatible with public safety."

At p. 249, the following language is used:—

"Patents, in some instances, reserve a percentage for road allowance. In cases where such a reservation is made, although a definite plan setting aside the road allowance has not been filed, I am of the opinion that the railway company ought to be considered as junior to any highways that the municipality may desire to lay over its tracks, until the whole of the reservation has been exhausted."

See also in this connection *Township of Caldwell vs. C.P. Ry. Co.*, 9 Can. Ry. Cas., 497, at p. 498.

In *City of Edmonton vs. Edmonton, Yukon & Pacific Ry. Co.*, 13 Can. Ry. Cas., 128, there was involved a situation where a subdivision had been made showing a specified street, and subsequently the subdivision was registered in the Land Titles office at Edmonton. It was contended that the location plan of the Edmonton, Yukon and Pacific, approved by the Department of Railways and Canals, was senior in point of approval. It developed, however, that the subdivision showing the street in question had been registered in the Land Titles office at Edmonton at a date antecedent to the date approving the location plan.

"The Public Works Act of the Northwest Territories, which is chapter four of the Ordinances of the Northwest Territories of 1901, provides in section 75 thereof as follows:—

"The registration in the land titles office of the plan of the subdivision into lots or blocks of any land not within the limits of an incorporated city or town shall vest the title to all streets, lanes, parks, or other reserves for public purposes shown on such plan in His Majesty; and no change or alteration in the boundaries of any such street, lane, park or public reserve shall be made without the consent of the commissioner having been first obtained."

It thus appeared that the title in the street in question was of a date antecedent to the date of the approval of the registration plan; and it was held that the street was, therefore, senior to the railway. See in this connection *City of Regina vs. C.P.R.*, 16 Can. Ry. Cas., 238, at p. 240.

The legislation above cited provides that the registration vests in the Crown the "title to all streets, lanes, parks or other reserves for public purposes shown on such plan." It would appear that this gives such a reservation practically the earmarks of a road allowance. In the present case, it does not appear that the reservation vesting title in the Crown, as above referred to, was in existence in the legislation of the province of Ontario when the plan was filed.

In *City of Hamilton v. Hamilton Radial Ry. Co.*, 22 Can. Ry. Cas., 438, there was involved the question of the incidents attaching to the filing of a subdivision plan with street allowances thereon showing. At p. 441, it was pointed out that there had been no acceptance by the municipality; there had been no evidence that there had been any expenditure for keeping the street in repair and in a condition fit to be used, which expenditure would have brought it within the category of a public highway, as defined in section 432 of the Municipal Act, chapter 192, R.S.O., 1914. There was no evidence of any user by the public. It is further stated that "in order that there should be dedication there must be intention. In order that there may be rights enforceable by the public, there must be acceptance on the part of the proper public authority."

On consideration, it would appear that road allowances as referred to in the *Sasman Case* occupy a different position from street allowances on a plan filed in connection with a subdivision; and it would appear that in the absence of compliance with the criteria referred to in *City of Hamilton vs. Hamilton Radial Electric Ry. Co.*, such a street allowance as is here involved has not the attribute of seniority. The cost of construction and maintenance of the crossing will, therefore, be on the municipality.

August 18, 1925.

The Chief Commissioner McKeown and Commissioners Boyce and Oliver concurred.

OTTAWA, SEPTEMBER 2, 1925.

DEAR SIR,—

Application of the Government of the Province of British Columbia for an Order reducing the rates on grain moving westward for export to the same rates, proportioned to the distance, as the same grain would carry if moving eastward for export.

File No. 30686.2.

By direction of the Board I set out below a copy of a resolution proposed by the Assistant Chief Commissioner and adopted at a meeting of the Board in Ottawa on Wednesday the 2nd instant, for your information:—

"Whereas Order in Council P.C. 886, of June 5, 1925, directed the Board,—

'to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure which will under substantially similar circumstances and conditions be equal in its application to all territories and localities.'

"it being set out that this was—

'so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion,

and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other varied industries.'

"And whereas it is set out that—

'due regard is to be given in particular to—

'(a) the claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

'(b) the encouragement of the movement of traffic through Canadian ports;

'(c) the increased traffic westward and eastward through Pacific Coast Ports, owing to the expansion in trade with the Orient and to the transportation of products through the Panama Canal.'

"And whereas the Order in Council has by its direction and by the wording contained in clause (c) above embodied as part of the investigation now before the Board the consideration of the bearing *inter alia* of traffic westward through Pacific Coast ports, thus, of necessity, involving the question of rates on export grain:

"Therefore be it resolved by the Board that, in terms of the direction so given to it by Order in Council P.C. 886 the matter of export grain rates via Pacific ports, and other matters, if any, pertinent to the investigation in which hearing may have been held but judgment not rendered, must of necessity be dealt with as part of the general investigation and under the judgment to be rendered in connection therewith.

"The resolution was supported by Commissioners Boyce and Lawrence. The Chief Commissioner and Mr. Commissioner Oliver dissenting thereto.

"*Ordered:* That the said resolution be adopted by the Board, as read."

Yours truly,

R. RICHARDSON,

Assistant Secretary and Registrar.

Application of the province of British Columbia for an Order reducing rates on grain and flour moving westward for export to the same rates, proportioned to distance, as the same would carry, if moving eastward for export.

File No. 30686.2.

JUDGMENT

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

This matter was heard in Vancouver in November, 1924, before Mr. Commissioner Oliver and myself, but before the complete record was available, legislation was outlined dealing with grain rates, and a general freight rate revision was called for. It therefore seemed advisable that decision await forthcoming action by Parliament. While admittedly this complaint is connected with the general subject above mentioned, yet in view of the fact that the situation is now fully developed as regards the commodities above specified, and, for the reason above noted, the matter has stood until another yearly grain movement is commencing, I think the parties in interest are now entitled to know the opinion of the Board upon the merits of the application, and a present pronouncement should be made.

The complaint of the province of British Columbia is based upon a contrast between the schedule of rates charged for carriage of grain and flour from prairie points to Fort William and Port Arthur, as compared with ruling charges for like mileages to Vancouver, and it is not denied that in instances the disparity complained of exists.

It has been shown that as regards places equidistant between the port of Vancouver and the ports at the head of lake Superior, while some inequality exists, there is a fairly even break as between the east and the west. The following examples of mileages and rates are illustrative:—

From	To	Miles	Rate per 100 lbs.	Rate per bushel
			cts.	cts.
Highgate, Sask.....	Fort William.....	1,011	26	15·6
“.....	Vancouver.....	1,006	26	15·6
Reford, Sask.....	Fort William.....	997	26	15·6
“.....	Vancouver.....	993	26	15·6
Stranraer, Sask.....	Fort William.....	1,006	26	15·6
“.....	Vancouver.....	1,012	26	15·6
Phippen, Sask.....	Fort William.....	1,007	26	15·6
“.....	Vancouver.....	1,013	26	15·6
Cantuar, Sask.....	Fort William.....	941	23	13·8
“.....	Vancouver.....	944	25	15·0
Webb, Sask.....	Fort William.....	949	23	13·8
“.....	Vancouver.....	945	25	15·0
Southfork, Sask.....	Fort William.....	979	24½	14·7
“.....	Vancouver.....	979	26	15·6

It is also clear that certain places a given distance from Vancouver, carry rates higher than those charged from points a like distance from Fort William and Port Arthur, and the following are cited as instances of such inequalities:—

From	To	Miles	Rate per 100 lbs.	Rate per bushel
			cts.	cts.
Calgary, Alta.....	Vancouver.....	642	22½	13·5
Red Jacket, Sask.....	Fort William.....	646	18	10·8
Gleichen, Alta.....	Vancouver.....	694	22½	13·5
Oakshela, Sask.....	Fort William.....	692	19	11·4
Edmonton, Alta.....	Vancouver.....	766	22½	13·5
Invermay, Sask.....	Fort William.....	769	20	12·0
Maple Creek, Sask.....	Vancouver.....	881	24½	14·7
Ernfold, Sask.....	Fort William.....	884	22	13·2
Marshall, Sask.....	Vancouver.....	944	25	15·0
Ceepee, Sask.....	Fort William.....	943	25	15·0
Secretan, Sask.....	Vancouver.....	1,022	26	15·6
Kincorth, Sask.....	Fort William.....	1,025	24	14·4
Maymont, Sask.....	Vancouver.....	1,045	26½	15·9
Birling, Sask.....	Fort William.....	1,044	26	15·6
Grandora, Sask.....	Vancouver.....	1,074	28	16·8
Ribstone, Alta.....	Fort William.....	1,073	26	15·6

In order to have before us the basis of the rates complained of, and to appreciate how the same were arrived at, it may be well to re-state briefly the reasons which led up to the establishment of the present schedule, the fairness of which is now challenged.

The rates established by the Canadian Pacific Railway on grain and grain products to Vancouver for export, were based on a relationship to the grain rates to Fort William, the basis, roughly (and with some exceptions) being that from its main line and southern branches, rates to Fort William were applied to points of corresponding mileage to Vancouver, but with the addition of a constructive mileage for the mountain haul. From north main line stations and northern branches of the Canadian Pacific Railway there were established approximately the same rates as the Canadian National Railways apply from their main line stations of equal distance to Port Arthur, which were on a somewhat higher basis than the Canadian Pacific Railway Company's main line scale.

The rates to both Fort William and Port Arthur were increased along with the general increases in rates which resulted from the change in conditions brought about by the war.

As a result of an appeal to the Privy Council growing out of the Board's decision on what is known as the "40 per cent increase" rate, Order in Council P.C. 2434, dated October 6, 1920, directed an investigation as to the railway rates and stated, *inter alia*, that:—

"Very strong representations were made at the argument on appeal to the effect that the order continued and indeed intensified an unjust discrimination in rates, it being claimed that higher freight rates prevail generally in Western Canada, that is west of Fort William, than prevail in Eastern Canada, that is east of Fort William. It was strongly urged that the reasons, whatever they may have been, for this differential no longer exists, and that as a matter of public policy the principle of equalization of rates East and West should now be recognized. On the other hand it was urged that the competition arising out of lake and river transportation as well as out of lower competitive rates on Eastern United States lines compelled a somewhat lower scale in Eastern Canada than in Western Canada. Whether or not these reasons now obtain in any substantial degree is a question which requires minute and expert investigation such as can be best conducted by the Railway Commission itself and not by Your Excellency's advisers, but the committee is strongly impressed with the very great desirability of bringing about with the least possible delay equalization of eastern and western rates.

"The Committee of the Privy Council therefore further recommend that as conditions have probably changed materially in recent years tending more and more to make equalization practicable, an inquiry by the Board be directed to be held at the earliest date with a view to the establishment of rates meeting to the utmost extent possible the above requirements as to equalization."

The Board conducted the investigation called by the Order in Council above referred to, the first sittings being held at Ottawa, November 22, 1920, and the hearings were concluded and the final argument took place at Ottawa in March, 1922. Thereafter the Board issued its judgment dated June 30, 1922, which was implemented by General Order No. 366 of the same date.

The judgment and order last above referred to made no special finding or direction with regard to rates on grain to Vancouver for export. On July 6, 1922, as a result of the enactment of chapter 41 of the Statutes of the Parliament of Canada, 1922, the so-called Crowsnest rates on grain from prairie points to Port Arthur and Fort William were established by statute. Realizing that this would result in complaints against the spread or difference between

eastbound movements to the lake Superior ports and westbound movements to Vancouver, for export, the Board had conferences with the representatives of the Canadian Pacific and Canadian National Railway Companies, as a result of which the railway companies voluntarily made a general reduction in export rates between prairie points and the Pacific coast ports of 20 per cent. These reductions were made effective August 1, 1922.

From the Board's Judgment dated June 30, 1922, and its General Order No. 366 implementing the same, an appeal was taken to the Privy Council by the Attorneys General of the provinces of British Columbia and Alberta, and after argument, Order in Council P.C. No. 207, dated October 2, 1923, issued, as follows:—

"The Committee of the Privy Council had under consideration a certain petition of the Governor in Council by the Attorney General of the province of British Columbia acting on behalf of the province of British Columbia and by the Attorney General of the province of Alberta acting on behalf of the province of Alberta by way of appeal from a general order of the Board of Railway Commissioners for Canada, dated the thirtieth day of June, 1922, made as a result of a general investigation and inquiry as to railway rates in Canada, directed by order of the Governor in Council, dated the sixth day of October, 1920 (P.C. 2434), upon hearing counsel for the petitioners for the government of Manitoba and the Winnipeg Board of Trade for the railway companies interested;

"And it appearing that the question as to the rates on grain from points in the provinces of Alberta, Saskatchewan and Manitoba to Vancouver and other British Columbia coast points for export was not specifically dealt with in the said judgment of the Board;

"The committee, therefore, recommends that the subject of the said export grain rates from points in the said provinces to Vancouver and other British Columbia coast points be referred to the said Board for immediate determination and such effective action as it may deem necessary.

"The committee further recommends that the Order in Council of the twelfth day of September, 1923 (P.C. 1848) be rescinded.

"All of which is respectfully submitted for Your Excellency's approval."

As a result of the above mentioned Order in Council the Board issued its General Order No. 384, dated October 10, 1923, ordering that the current rates on grain and grain products to Pacific coast ports for export be reduced uniformly ten per cent, effective not later than October 22, 1923. The rates prescribed by this order are those now in effect (except as to Edmonton, Dunvegan and British Columbia Railway points, which were subsequently reduced), and which were the subject of this complaint heard in Vancouver in November last.

It may also be mentioned that dealing with this rate appeal Order in Council P.C. 2166 was issued, dated October 24, 1923, which sets out that the question of export grain rates from prairie points to Vancouver was specifically dealt with by Order in Council of October 2, 1923, P.C. 2007, and recommended that all other subjects of complaint referred to in the said petition be also remitted to the Board of Railway Commissioners for action thereon.

From the above it is evident that the tolls now in force were considered by the Board as just and fair, having regard to the conditions prevailing, and recognizing what is known as the "mountain scale," for which a figure greater than the prairie rate is charged, and there the matter rests at the present time. Speaking generally, it is correct to say that differences upon the lines of the Canadian Pacific Railway as between grain rates east and west may be accounted for by this increased mountain scale of one and a quarter to one, as against the prairie rate. The easier gradients of the Canadian National Rail-

way seem to afford no reason for such difference upon the last-mentioned line. As the matter is now presented to Mr. Commissioner Oliver and myself in this application, having regard to the legislation and directions of the Orders in Council, I think it is incumbent upon us to give consideration to the subject in the light of parliamentary action had since the above judgment was pronounced.

Previous to the Railway Act amendment of June, 1925, the conditions of affairs as between the western and eastern ports in their competition for grain and flour export, was that the latter had the benefit of Crowsnest rates applied to such commodities moving eastward from points of loading west of Fort William in existence in 1897, although in actual practice a wider construction was put upon the terms of such agreement. But by the amendment of 1925, such rates now apply to grain and flour "moving from all points on all lines of railway west of Fort William, to Fort William or Port Arthur, over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament." In the presence of this legislation, giving rise, it is claimed, to conditions as against the western ports more onerous than have heretofore existed, it is, I think, the duty of the Board to give effect to provisions of the Railway Act calling for the removal of unjust discrimination, as well as to the instructions of the Order in Council, and to provide to all points, whether east or west, an equality as far as the same may be within its power to do so. I do not think it can be denied that the maintenance of the present inequality places the western ports at a serious disadvantage and gives colour and substance to the complaint of injustice. While it may be said that Parliament could very easily have covered the western situation by legislation, it does not seem to me that such statement is conclusive, but rather it is for us to carefully scan the recent legislation, and the directions of Order in Council P.C. 886, not only to see whether the Board's powers are sufficient to meet the situation (as I think they are) but also to see whether the spirit of such legislation does not direct us to do so. If not, the instructions issued to this Board under this Order in Council appear meaningless as regards this phase of the problem. It is not necessary to embody the whole Order in Council in these reasons for judgment. The objective which it has in view is: "The establishment of a fair and reasonable rate structure which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, etc." This carries with it an obligation to effectively implement such instructions, which to my mind are unambiguous. No action on the part of the Board can produce such result unless it directs that such rates really be equalized, whether the trade moves in an easterly or in a westerly direction.

If this application had to do with commodities other than grain and flour, it would not seem to me necessary to dispose of it prior to a report involving whatever changes are generally necessary, but the grain business of Canada is of sufficient importance to call for special legislation concerning the rates charged for transportation of grain and flour. Irrespective, almost, of the cost of transportation it is decreed that this national asset must find its way to market, so far as railway carriage is concerned, at a rate substantially lower than other commodities bear. I do not think it can be contended that such action is founded on a desire or intention to aggrandize one part of the country at the expense of another, but rather for the reason that the enormous national value of the grain production of Canada justifies such procedure.

Although in the legislation referred to mention is made of the volume of trade moving in an eastern direction only, nevertheless in view of the reasons upon which such legislation is based, and of the direction to equalize rates and do away with unjust discrimination, contained in the Order in Council and in the Railway Act, it seems to me that when dealing with the same commodities, we would be wholly turning our backs upon the true intent and meaning of

such legislation and instructions, if equal treatment were refused to the westward flow. As before remarked, the difference between eastward and westward rates is, substantially, the mountain differential. When it is remembered that this handicap does not exist over the Canadian National line of railway, the maintenance of such surcharge over the last named railway line cannot be justified, however reasonable it be as regards the Canadian Pacific line. But two sets of rates cannot obtain over competing lines, and it is the existence of the mountain haul in the one instance, and its absence in the other, that makes the whole British Columbia freight rate business difficult. It is impracticable from a railway standpoint to say, "let there be a differential on the line where the reason for it exists, but not on the other where the gradients give no justification for it." If, in fairness to the Canadian Pacific Railway Company the differential be continued, we have the Canadian National Railway hauling grain westward, over a portion of its line of no more difficult grade than its line eastward, and maintaining a causeless preference in favour of the latter haul as against the freight going west. Such procedure is, in my opinion, not only at variance with the instructions of the Order in Council above referred to, but out of line with the general provisions of the Railway Act upon that subject, and in the face of the instructions which we now have, I cannot see how such inequality and discrimination are to be justified or that they should be allowed to continue.

Turning now to the other side of the dispute, it is clear that the railways base their opposition to the application upon the loss of revenue involved in acceding to the request of the Government of British Columbia.

By a series of decisions of this Board it has been held that just and reasonable tolls mean tolls reasonable and just from the standpoint not only of the producer, but also from the point of view of the railways—having regard to the revenue necessary to enable them to operate successfully and including a fair return on the investment made.

It is not open to anyone to criticize or find fault with the principle involved in such decisions and, under the conditions which prevailed fifteen or twenty years ago, these two considerations then marched fairly well abreast, but in the dislocation consequent upon the events of years which have intervened, this alignment, if not altogether lost, is not by any means so apparent.

The Board is now upon the eve of a general investigation and inquiry concerning freight rates with certain well defined objects in view. If during this work the Board is confronted by the fact that sufficient income for the preservation and maintenance of railway property necessitates freight charges under which business may not be successfully carried on, the Board cannot content itself by ending its journey in an impasse, but rather in my opinion, by uncovering all the facts and conditions involved in this reference it may assist, to that extent, in finding a way out; and while the ultimate steps necessary to such an end may be outside the powers of this Board, yet the consideration of what is involved in this reference should, and I think will, help to show some of the things essential to that purpose. If the amount of railway revenue necessary to be raised in order to be fair and just to the railways from their standpoint, imposes upon business generally a burden which stifles industry and makes work unprofitable, an adjustment is necessary somewhere. The different sections of the country must be enabled to trade, to ship, to carry on business, and a series of schedules must be elaborated which will not fetter the country's industrial activity, but under which it can breathe and flourish. But if in order to deal with the railways in a just and reasonable way and to put them in possession of sufficient revenue to carry on business, having regard to all their obligations, it be shown that extraneous aid should be afforded, the decisive question will be whether such aid should be so provided, or the business of the country be injured and retarded. In the investigation now about to be carried

on by the Board, many of the necessary facts will, I think, be disclosed with sufficient clearness to assist in a decision upon this matter. In the presumption that the two considerations above mentioned as being at the bottom of our rate structure are not now in line, it would seem that any relief to business conditions in the form of reduced railway rates must be accompanied by some provision for supplementing railway revenue or by some other action, for the loss of revenue involved in granting applications of this nature, is substantial. It is open to the Board to grant rates which will produce sufficient revenue for transportation companies, and subject to legislation, it is to be presumed that the Board will be expected to continue such course unless their revenues are supplemented in some other way if that be necessary.

The suggestion has been made from different quarters that the Board defer judgment in this matter until the work of the general freight rate revision be completed, on the ground that it is part of the general subject of rate revision and should be dealt with jointly with all other matters and localities involved. Having regard to the wide scope of inquiry, it would be unwise, I think, as a rule of procedure, to detach individual complaints and make pronouncement upon them. But the case of British Columbia has already been the subject of inquiry regularly started and carried on by the province interested; a hearing was held nearly a year ago; judgment has been deferred until the effect of legislation then pending might be determined; and I do not see how the general inquiry will be embarrassed by the disposal of this particular subject. I think, perhaps, that many of those so objecting are unaware that in this present case British Columbia's complaint has been already heard as above outlined.

But apart from that, it is quite within the range of probability that action will have to be taken by the Board in other directions to meet situations which the interests of various localities in Canada may demand. Before many weeks the coal situation may require that rates from Alberta and Maritime coal mines to Quebec and Ontario be adjusted to meet the needs of the inhabitants of these two last-named provinces. A present refusal to deal with the British Columbia situation on the grounds urged, would logically entail a denial of coal rate adjustment until conclusion of the general rate revision, unless a different treatment is to be accorded to one province than to another. I am unwilling to assent to the view that, pending complete revision, the Board must cease to function in necessary cases, or that its action should be fettered as above suggested. If effect be given in this instance to protests from localities not immediately concerned, the Board could hardly turn its back upon similar protests from British Columbia, should they be made, protesting against immediate relief which other places might imperatively need.

I think this application should be allowed and the Canadian Pacific and Canadian National Railways should file rates, effective not later than the fifteenth day of September, 1925, reducing the rates on grain and flour to Pacific ports within Canada for export, to the same rates, proportioned to distance, as such grain and flour would carry if moving eastward for export, and such order will be made accordingly.

OTTAWA, September 2, 1925.

Commissioner Oliver concurred.

ORDER No. 36769

In the matter of the application of the province of British Columbia for an Order reducing the rates on grain and flour moving westward for export to the same rates, proportioned to distance, as the same would carry if moving eastward for export.

File No. 30686.2.

WEDNESDAY, the 2nd day of September, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, November 5, 1924, in the presence of counsel for the provinces of British Columbia and Alberta, and the city of Vancouver, and representatives of the Canadian Pacific and Canadian National Railway Companies, the evidence offered and what was alleged; and upon reading the written submissions filed in support of the application and on behalf of the Canadian Pacific Railway Company objecting thereto,—

It is Ordered: That the Canadian Pacific and the Canadian National Railway Companies file tariffs, effective not later than the 15th day of September, 1925, reducing the rates on grain and flour to Pacific ports within Canada, for export, to the same rates, proportioned to distance, as such grain and flour would carry if moving eastward for export.

H. A. McKEOWN,

Chief Commissioner.

Application of the Government of the Province of British Columbia for an Order reducing the rates on grain moving westward for export to the same rates, proportioned to the distance, as the same grain would carry if moving eastward for export.

File 30686.2.

JUDGMENT

COMMISSIONER BOYCE:

On August 29 last, after this case had been discussed at more than one meeting of the Board, presided over by the Chief Commissioner, my brother Commissioner Lawrence and I informed the Chief Commissioner, in writing, through the Secretary of the Board, that if it was proposed to deliver any judgment, purporting to deal with the matters involved herein apart from the general rate investigation, of which the subject is a part, we desired to express our views. The judgment of the minority of the Board was, however, issued without the knowledge of Commissioner Lawrence or myself, and order thereupon was signed by the Chief Commissioner, without according to me or to Commissioner Lawrence, as members of this Board, the most usual and ordinary courtesy of perusing, and preparing our opinions upon, such judgment before an order issued in terms thereof.

As I and my brother Commissioner Lawrence promised the Chief Commissioner that we would express ourselves, I am obliged for the reasons just stated, to do so, after order issued, but as part of the judgment of the Board upon this complaint as it presents itself to me now. I refrain from further comment upon the ethics involved in excluding expression of opinion in dissent of members of the Board by this method.

Early in July this Board proceeded in pursuance of the direction contained in the Order in Council, P.C. 886, dated June 5, 1925, which, *inter alia*, directs the Board,—

“to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure which will under substantially similar circumstances and conditions be equal in its application to all territories and localities;”
to lay the groundwork for such a thorough investigation.

The Chief Commissioner of the Board submitted to the members of the Board a draft, prepared by him, of a document to be made public, outlining the policy and programme to be followed by the Board in commencing its duties under the Order in Council and the Chief Commissioner called the Board together to consider and settle the terms of said draft. At two meetings of the Board that draft was considered and settled, and, by direction of the Board, when, and as settled by the Board, that public notice was issued by the Secretary of the Board under date of July 9 last. At the time said notice was considered and settled, by the Board, testimony in this complaint had been heard before two members of the Board and no decision had been given. The pendency of this complaint was referred to at that Board meeting, and, with due regard to this and all other pending complaints in like condition, and with the concurrence of all members present, including the Chief Commissioner, the draft by him submitted for consideration of the Board was changed, and, as finally settled, and evidenced by the initials of the Chief Commissioner, and as issued to the public, contained the following clause:—

“Testimony now before the Board in cases already heard and in which no decision has been given is not to be repeated. New and material evidence in such cases may be submitted in the usual way.”

Both the Canadian Pacific Railway Company and the Canadian National Railways, in writing, asked for leave to submit to the Board, “new and material evidence” in this case as such notice in plain terms gave all parties to this or any other proceeding, before the Board, the undoubted right to submit. Their application stood to be dealt with, as I presumed, as a part of the procedure in hearing the general case, and those applications are still standing for decision. All matters of rate complaints, affecting any locality in Canada, so stood from and after 9th July last, to be dealt with under the procedure outlined in Board’s procedure contained in its public notice of that date.

The Canadian National Railways whose revenues would be affected by any judgment granting this application to the extent of over a million dollars annually, protested that it had not even had notice of the hearing of this complaint, and no opportunity for preparing its case at the hearing. After a careful and anxious examination of the proceedings, I find, as a fact, that no notice of hearing was ever given to the Canadian National Railways under the rules of this Board, or otherwise, and what examination of the complaint did take place at the hearing at Vancouver in November last, was, as far as the Canadian National Railways is concerned, entirely without due notice of hearing or service of complaint. The notice of hearing to all other parties was shorter than that usually allowed for such a hearing at a far distant point.

Primarily, therefore, the judgment of the Chief Commissioner purports to dispose of a complaint, involving an aggregate loss of revenue to both the large railways concerned (the one nationally owned and already carrying a heavy annual deficit) estimated at nearly two million dollars annually, without any formal notice whatever as to the National Railway, and insufficient notice as to the other railway (C.P.R.). It is difficult to conceive that such a condition of things should be possible in this country, and in view of the provisions of the

Railway Act, and the rules and practice of the Board, and of what is generally accepted as a fundamental basis of natural justice, but the facts I state are, as I find them from the record of the proceedings, and were fully brought to the attention of every member of this Board by strong protests from the railways, oft repeated and insisted upon, before any decision was prepared.

The judgment of the minority members of the Board, issued as the judgment of this Board, is put forward as part of the judgment of the Board upon the general rate investigation required to be made under the Order in Council, P.C. 886, cited. It is so expressly made plain in the opinion of the Chief Commissioner.

I entirely dissent from such being, in any way, binding upon the Board, because:—

(a) The Board has, as a body, prescribed publicly the practice to be followed in making its investigations under the said Order in Council, and by its public notice had specially stated, that in cases, like the present, where testimony had been taken but no decision had been given, new and material testimony could be given. The railways having demanded that right, and given notice that they intended to avail themselves of it, the case was not closed or ripe for decision;

(b) There was no investigation, whatever, of the complaint since, in terms of the Order in Council P.C. 886;

(c) Since the Order in Council passed, the whole subject of the whole rate investigation was in the hands of the Board as a whole, and the Board, as a whole, was directing its course and no hearings of cases whatever had been held—or had been—could be, provided for until the periods of time for filing and answering complaints, and terms of notice generally of 9th July outlining preliminary steps to the hearings had respectively expired and been complied with.

(d) The whole case, as it now stands, having been laid before the Board, as part of the general investigation, the Board first, without a dissenting voice, had precluded itself from dealing with this case, except as a part of the general investigation, and, records, by a majority vote, at a meeting called by the Chief Commissioner to consider the decision upon this complaint, had decided that no such decision should be given except as part of such general investigation.

(e) The hearing of the complaint at Vancouver at which all evidence upon which judgment was based was conducted without notice to the Canadian National Railways which had protested against its validity, and its protests had not been even considered by the Board.

The judgment of the Chief Commissioner, therefore, is clearly not the judgment of the Board, but is contrary to the principles laid down in the Board's notice to the public of July 9 last, above referred to, and to a resolution of the Board, passed at a meeting of the Board, held this 2nd day of September called by and presided over by the Chief Commissioner for the purpose of considering this case at which Commissioner Oliver and all other members of the Board were present, before any judgment as that now in question was completed, delivered, or issued, and which resolution is as follows:—

“Whereas Order in Council, P.C. 886, of June 5, 1925, directed the Board,—

“to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of parliament, with a view to the establishment of a fair and reasonable rate structure which will under substantially similar circumstances and conditions be equal in its application to all territories and localities;”

it being set out that this was—

“so as to permit the freest possible interchange of commodities between the various provinces and territories of the Dominion, and

the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other varied industries."

"And whereas it is set out that—

"‘due regard’ is to be given in particular to—

"(a) the claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;"

"(b) the encouragement of the movement of traffic through Canadian ports:

"(c) the increased traffic westward and eastward through Pacific Coast ports, owing to the expansion in trade with the Orient and to the transportation of products through the Panama Canal."

"And whereas the Order in Council has by its direction and by the wording contained in clause (c) above embodied as part of the investigation now before the Board the consideration of the bearing *inter alia* of traffic westward through Pacific Coast ports, thus, of necessity, involving the question of rates on export grain;

"Therefore be it resolved by the Board that, in terms of the direction so given to it by Order in Council P.C. 886, the matter of export grain rates via Pacific ports, and other matters, if any, pertinent to the investigation in which hearing may have been held but judgment not rendered, must of necessity be dealt with as part of the general investigation and under the judgment to be rendered in connection therewith."

This resolution, in the presence of all the members of the Board, was proposed by the Assistant Chief Commissioner, and concurred in by Commissioner Lawrence and myself. The Chief Commissioner and Commissioner Oliver dissented therefrom, and in accordance with usual procedure, in this, as in any other court, the majority governed and the resolution was carried, and is now a resolution of the Board, governing the conduct of the general investigation of freight rates in Canada, and was binding upon the Chief Commissioner when he subsequently issued his judgment.

The Order in Council of June 5 last, specially, and in plain terms, deprecates "any partial or incomplete consideration of the freight 'rate structure'," and calls for "a thorough and complete investigation of '*the whole subject of railway freight rates in the Dominion.*'" The disposition suggested by the judgment now offered is not only contrary to the policy and principle laid down by this Board by the quoted resolution, but it is a direct departure from the directions of the Order in Council as the whole rate investigation committed to the Board by it, and would, in its effect, make of the investigation of the whole rate structure insisted upon by the Order in Council a thing of "shreds and patches," of no avail whatever, in the important work committed to the Board of "the establishment of a fair and reasonable rate structure, *which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities so as to permit of the freest possible interchange of commodities between the various provinces, etc.,*" as in the resolution of the Board as quoted.

In the debate in Parliament upon the amendment to the Railway Act in regard to Crowsnest Pass Agreement in June last, the claims of the province of British Columbia, as presented to two members of this Board, in Vancouver, last November, were presented to Parliament, which was urged to give relief by that legislation. Parliament, which had available to it, if it desired them, all the proceedings and evidence submitted at the hearing, declined to accede to such request, and for the reason, clearly expressed, that the question was one for this Board (not a minority, against a majority, thereof), but for the Board to deal with as part of the Canadian Rate structure, the investigation of which had then been committed to this Board by the Order in Council of June 5.

It appears to me, therefore, that for two members of this Board, in the face of the expressed negation of the majority of the Board, embodied in a resolution of the whole Board, at a meeting of the Board, called for the express purpose of considering this complaint, and the desirability of disposing thereof, to attempt to do that which Parliament, as recently as June last, declined to do, is incredible and grotesque.

This complaint is either a part of the General Rate Investigation, or it is not. The answer in Parliament was that it is such a part and is to be dealt with by the Board as such a part. The Board itself has so dealt with it in its notice of July 9, and its resolution of September 2, and, therefore, it is a very simple conclusion that no decision of a minority of the Board can dispose of the question involved, any more than a minority judgment of the Board can dispose of the complaints of the Maritime Provinces. The one case is on par with the other, and, if applied, the absurdity would run through the whole rate investigation and render it futile and farcical.

I specially refrain from commenting, in any way, on the merits involved in the complaint. I propose to deal with them, when the time comes, and according to the procedure laid down by the Board, as I propose to deal with the complaints from every other province, or locality, in Canada, with an earnest desire to discharge my duty as a member of this Board under the Order in Council and, after a careful and searching investigation of the Canadian rate structure in all, and not only one, of its features, endeavour to do my part in fulfilling my duties and responsibilities with a view to the establishment of such a rate structure, as a whole, and with justice equally meted out to all localities, as is contemplated and insisted upon by the Government of this country, and which it is palpably impossible to do in the manner proposed by the judgment of the Chairman of the Board, which cannot be productive, in my judgment, of that confidence and respect of all interests in Canada concerned in the general rate investigation, which it is most essential should be conserved and maintained.

The United Farmers of Alberta at the Annual Convention, January 20 to 23 last, passed a resolution dealing with the subject matter of freight rates westbound from the prairies. Under date February 11 last a copy of this resolution was sent to the Chief Commissioner. It was not submitted to members of the Board for their opinion thereon. On the date of its receipt (February 16, 1925), a letter was written by the Chief Commissioner to the Acting Secretary of the United Farmers of Alberta as follows:—

"I beg to acknowledge receipt of your favour of the 11th instant enclosing copy of resolution adopted at the Annual Convention of the United Farmers of Alberta, at its session last month, and hasten to assure you that the Board is in full sympathy with the object of the resolution.

"The Board took the initial step of obtaining an equality of freight rate involving, we hope, the removal of all mountain differential, but as our action has been held up by appeal in the Crowsnest Pass Agreement matter we have to await its disposition until we know exactly where we stand. I feel confident that we will be able to attain the full object of your resolution, as well as more satisfactory freight rate conditions than have ever previously obtained, as soon as the ground is cleared and we are able to proceed with the work knowing just what we have to meet.

"May I further say that the Board will welcome any further suggestion on the part of your organization at any time you may be good enough to favour us with the same."

I deprecate the assurance, contained in this letter, that "the Board is in full sympathy with the object of the resolution" when the Board had had no opportunity, as a Board, of expressing its opinion thereon. I feel quite certain

that in accordance with its usual practice in such cases the Board, had it been consulted, would have referred to the fact that the matters involved in the resolution were under consideration in a case which had been presented to the Board and in which there had not yet been any disposition. I cannot but think that the effect of the reply quoted will prove embarrassing to the Board in attempting to deal judicially with the matters involved in the whole rate investigation.

The minority judgment of the Chief Commissioner is sharply at variance with the Judgment of the Board upon the same rate principles as are now involved in that locality. See judgment of the Board, vol. XII (1922), pp. 61 *et seq.*, with special reference to what is set forth on pp. 71 and 72. That was a judgment of the Board without a dissenting voice, practically an unanimous pronouncement by the Board in 1922, after lengthy and searching investigation. The present Chief Commissioner and Mr. Commissioner Oliver were not then members of the Board. To attempt under these conditions, to override and set at naught by a minority of the Board, after a palpable, informal, hasty and irregular hearing, the considered judgment of the Board, is a novel and unique procedure.

The disposition now attempted cannot be effective in any way towards a final disposition of this part of the general investigation into freight rates constituting the whole structure relative to its parts, and of the parts in relation to the whole. Only the fullest investigation of all parts of that structure in every locality in Canada, with a view to harmonizing those parts in relation to the whole structure, will satisfy the plain requirements of the Order in Council and enable the Board to function thereunder.

All orders of this Board, dealing with rate matters, before signature, are by the long and safe practice of the Board, required to be approved and bear the initials of the Chief Traffic Officer of this Board. This practice has consistently been followed, except in this case, when the order of the minority was issued without submitting for, or obtaining the approval thereto of that official, whose special expert knowledge on rate problems has always been relied upon with confidence by this Board. Why this most desirable and safe practice should not have been followed in this case; and why no copy of judgment, or order was, before issue, submitted to any member of the Board in the usual way for an expression of his opinion upon so important and far-reaching matter, affecting the whole rate structure under investigation, and why effort should be made to commit the Board, in writing, to sympathy with a resolution dealing with and going to the merits of the case, while before the Board, without submitting same to the Board; and why the plain commitments of the Board, with the approval of the Chairman, in its public notice of July 9 last as to dealing with all pending cases as part of the general investigation upon which the Board was then embarking, should be utterly disregarded, with the protests of the railways as to absence of notice of hearing of the complaint and insistence upon their undoubted right conceded by the Board to submit further evidence, are some of the questions requiring answer and explanation in the face of the apparently desperate desire, suddenly developed, to dispose, by a minority of the Board, against the judgment of the majority, of a complaint which had been pending for more than a year, and which the whole Board had previously, as recently as July, publicly treated as one still open and to be dealt with (if required upon new evidence) as part of the general rate investigation.

For these reasons I dissent, as I have before, in writing, stated to the Chairman, I would dissent, from the disposition he proposes to make of this complaint in advance of such consideration as it should receive as an important part (though only a part) of the whole rate structure which I conceive to be the duty of the whole Board to investigate. But for the deplorable celerity and

secrecy with which judgment and order of the minority of the Board were issued, the judgment would have been over-ruled by the expressed dissent of the majority. But the meeting at which the Board's resolution of September 2 was carried by the majority and expressed such dissent, was adjourned with no intimation that any judgment of the minority would be prepared, and such judgment of the minority and order thereupon issued, and the pretended effect thereof telegraphed to the complainants in the far west before any intimation was made that such decision would be handed out.

The issue of an order of the Board, I would point out, was only made possible in this case, and under these conditions, by the mere accident of circumstances that the Chief Commissioner, primarily, has the power to sign the orders of the Board. It needs no argument to show the utter fallacy of any contention put forward as a justification or excuse for issuing such an order in the circumstances I have detailed, giving effect, as it pretends to do, to the views of the minority in opposition to the majority decision as regards matters before the Board at a meeting of the Board, presided over by the Chief Commissioner, and called by him, for the consideration of the identical matter assumed to be dealt with by the order, and at which meeting every member of the Board was present and expressed his opinion. Had the situation been varied, in the same circumstances confronting the Board, so that any other Commissioner than the Chief Commissioner, had sat at what hearing took place in Vancouver, with Commissioner Oliver, no order of the Board could have issued giving effect to the will of the minority against the majority. This is an indisputable fact. Only the Chief Commissioner (or, in his absence, the Assistant Chief Commissioner, or any other Commissioner designated by the Chief Commissioner to sign orders, and none have been so designated by him) can sign orders of the Board. The orders of the Board are intended and presumed to express the will of the Board. This order expresses the contrary. Its issue was, in my opinion, improper and in contravention of the powers of any Chief Commissioner under the Railway Act, and assumes or usurps a power of veto of the will of the Board, as expressed by the majority, which no Chief Commissioner possesses. This Board is constituted by the Railway Act, which provides (section 9, subsection 2) that the Commission "shall be a Court of Record, and have an Official Seal which shall be judicially noticed." In this Commission, until now, as regards matters brought before the Board, as this matter was, the majority opinion of the Board has always prevailed. It has been the wholesome practice, of this Board, until now, to invariably consider in Board meeting as a whole Board, any important rate question, irrespective of what members of the Board sat at the hearing thereof. The majority opinion of the Board, in such deliberations, always prevailed and was given effect to. In one case, the views of the later Chief Commissioner (Hon. F. B. Carvell) strongly expressed, concurred in by one other Commissioner were not concurred in by three other members. The decision of the majority prevailed and the order was issued. I see every reason for approval of that procedure, I see none, in fact or law, to justify the repudiation of the majority opinion accomplished in this case merely by use of the methods I have referred to and which I unhesitatingly deprecate and deplore.

I assert my claim to express my opinion, equally with that of the Chief Commissioner and Commissioner Oliver upon this case. Every member of this Board has the same right, under the constitution of this Board. That in signing an order against the will of those members of the Board in the majority, whose views were opposed to and had no idea or intimation that such would be made, the Chief Commissioner should presume or pretend to exclude such a right, especially in so important and grave investigation affecting the whole Canadian Rate structure committed by the Government of Canada, is a matter upon which I can do no more than record my emphatic protest.

The order, improperly issued, should be forthwith rescinded, and all matters involved in the complaint should be reserved for the consideration of the Board in the same manner, and subject to the same principles and procedure as those complaints from any other province, or locality in Canada, in the general investigation of the whole rate structure, under the terms of the Order in Council, P.C. 886, and the notice thereunder, issued to the public, dated July 9 last, and such matters involved in this complaint should not be separated from such general investigation for special and preferential treatment which would only result in the Board's functions in dealing with the whole structure being crippled and embarrassed.

OTTAWA, September 3, 1925.

Commissioner Lawrence concurred.

COMMISSIONER LAWRENCE:

I concur in the memorandum of Mr. Commissioner Boyce, in which he has dealt generally with the legal phase of this question; but I feel I would be remiss in my duty if I did not take the opportunity of making a few observations thereon.

On July 9, 1925, the Board sent to all interested parties, a circular which, among other things, on page 3, contains the following paragraph:—

“Testimony now before the Board in cases already heard and in which no decision has been given is not to be repeated. New and material evidence in such cases may be submitted in the usual way.”

The circular referred to, the above paragraph of which is quoted, was drafted by the Chief Commissioner and was thoroughly discussed at a Board meeting, called by him, before it was sent out; and there is not the least doubt in my mind but that the Chief Commissioner understood that it applied to the British Columbia situation, as well as to all points and places in the Dominion of Canada. Therefore, I cannot understand why his change of opinion.

Inasmuch as there have been many protests from different interests, and from several places and localities, against the Board taking any action or giving any decision affecting any place or locality on the rate question until such time as the whole question of rate structure had been thoroughly investigated, or until every person or persons had been given an opportunity to be heard upon every phase of the whole matter. This was intimated in our circular of July 9 last, and so understood by the Board. Therefore, I am of opinion that we are in honour and duty bound, as well as obligated by our oath of office, to observe the Board's obligations as set out in said circular of July 9, 1925.

I, therefore, in the interest of the public generally, and also with the object of keeping inviolate the principles laid down in former actions, i.e., serving the whole of the Dominion of Canada with equal fairness, dissent from the judgment of the Chief Commissioner, a copy of which I had not seen until after it had been given to the public and telegraphed to applicants, and I was thereby denied the usual privilege of pronouncing upon the same, which, I think, should have been done, particularly after the matter had been discussed by the whole Board.

I think that, in the public interest, an order should issue countermanding Order No. 36769, dated September 2, 1925.

OTTAWA, September 4, 1925.

ORDER No. 36729

In the matter of the Order of the Board No. 6844, dated April 6th, 1909, granting leave to the Canadian Freight Association to substitute for the existing commodity rates on wire fencing and netting, in carloads, from Hamilton, Windsor, and Walkerville to points east of Toronto, the class tariff rates thereon, subject to the existing commodity rates to Montreal and Ottawa as maxima, except that the said carload commodity rates from Hamilton, Windsor, and Walkerville to points east of Toronto be scaled, as set out in the said Order.

Case No. 3210

THURSDAY, the 20th day of August, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed on behalf of the Canadian Freight Association, and the report of its Assistant Chief Traffic Officer, the parties consenting,—

The Board orders: That the said Order No. 6844, dated April 6, 1909, be, and it is hereby, rescinded.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 36730

In the matter of the Order of the Board No. 18775, dated February 22nd, 1913, requiring the Grand Trunk and the Canadian Pacific Railway Companies to publish and file commodity rates on wire fencing and wire netting, in carloads (including staples and wire gates, when forming part of the said carloads), from Montreal, on the basis set out in the said Order.

File No. 7346.1

THURSDAY, the 20th day of August, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer, and reading what is filed on behalf of the Canadian Freight Association, the parties consenting,—

The Board orders: That the said Order No. 18775, dated February 22, 1913, be, and it is hereby, rescinded.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 36732

In the matter of the application of the Canadian National Railways, herein-after called the "Applicants," for permission to file on less than statutory notice, an amended rate on sand and gravel, in carloads, from Rawdon to Montreal, in the Province of Quebec.

File No. 27612.27

FRIDAY, the 28th day of August, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*C. LAWRENCE, *Commissioner.*

Upon its appearing that an erroneous rate was published in the Applicants' Supplement No. 3 to Tariff C.R.C. No. E-838, and that it is desirable, in order

to avoid discrimination and further injury to shippers at other points, that the proper rate be published as soon as possible,—

The Board orders: That the applicants be, and they are hereby, permitted to file, effective September 1, 1925, a rate upon sand and gravel, in carloads, from Rawdon, in the province of Quebec, to Montreal, in the said province of Quebec, of $3\frac{1}{4}$ cents per 100 pounds; the supplement giving effect to the said rate to show that it is issued under the authority of this order.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36766

In the matter of the application of the Esquimalt & Nanaimo Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Great Central Lake Branch from Solly Junction, mileage 0 (mileage 35.8 Port Alberni Subdivision), to Great Central Lake, at mileage 10.36.

File No. 29731.3.

MONDAY, the 31st day of August, A.D. 1925.

Hon. H. A. McKEOWN, K.C., Chief Commissioner.
S. J. McLEAN, Assistant Chief Commissioner.
A. C. BOYCE, K.C., Commissioner.

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board Orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Great Central Lake Branch from Solly Junction, mileage 0 (mileage 35.8 Port Alberni Subdivision), to Great Central Lake, at mileage 10.36: Provided the rate of speed of trains operated over the said line shall not exceed fifteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36758

In the matter of the application of the Central Canada Railway Company, hereinafter called the "Applicant Company," for approval of Supplement No. 1 to its tariff C.R.C. No. 1, on file with the Board under file No. 30186.5.

TUESDAY, the 1st day of September, A.D. 1925.

Hon. H. A. McKEOWN, K.C., Chief Commissioner.
S. J. McLEAN, Assistant Chief Commissioner.

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's Supplement No. 1 to tariff C.R.C. No. 1, on file with the Board under file No. 30186.5, be, and it is hereby, approved; the said Supplement, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 36759

In the matter of the application of the Edmonton, Dunvegan & British Columbia, Railway Company, hereinafter called the "Applicant Company," for approval of Supplement No. 1 to its tariff C.R.C. No. 1, on file with the Board under file No. 30186.3.

TUESDAY, the 1st day of September, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's Supplement No. 1 to Standard Maximum Passenger Tariff C.R.C. No. 1, on file with the Board under file No. 30186.3, be, and it is hereby, approved; the said Supplement, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 36760

In the matter of the application of the Edmonton, Dunvegan & British Columbia, Railway Company, hereinafter called the "Applicant Company," for approval of Supplement No. 1 to Local Standard Passenger Tariff C.R.C. No. S-3, on file with the Board under file No. 30186.4.

TUESDAY, the 1st day of September, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Supplement No. 1 to Local Standard Passenger Tariff C.R.C. No. S-3, on file with the Board under file No. 30186.4, be, and it is hereby, approved; the said Supplement, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 36785

In the matter of the application of the Inverness Railway and Coal Company, hereinafter called the "Applicant Company," under Section 331 of the Railway Act, 1919, for approval of its Standard Freight Mileage Tariff, C.R.C. No. 4, on file with the Board under file No. 34097.

TUESDAY, the 8th day of September, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's Standard Freight Mileage Tariff C.R.C. No. 4, on file with the Board under file No. 34097, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,

Chief Commissioner.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Canadian Car Demurrage Bureau and The Brantford Cordage Co., Limited, Brantford, Ont., for an informal ruling of the Board in regard to the service by the C. N. Rys., upon the consignee of so-called constructive placement notices under the provisions of the Canadian Car Demurrage Rules.

File No. 1700.220.8

The Board was asked for an informal ruling on the point:

“Is a railway company justified in serving notice of constructive placement to consignee, covering cars containing shipments in bond prior to delivery permit being received from Customs?”

The matter was referred to the Chief Traffic Officer of the Board, who, under date of July 29, 1925, submitted his report.

Copies of the report were sent to the parties with an intimation that it had been adopted by the Board as its interim ruling, opportunity being reserved to either of them to file exceptions thereto within two weeks; the exceptions, if any, thereafter to be considered by the Board.

Further submissions were filed under date of August 13, 1925, by The Brantford Cordage Company, Ltd.

On August 20, the Canadian Car Demurrage Bureau advised the Board that it had no further submissions to make.

These submissions have been considered, and set out below is the report of the Chief Traffic Officer of the Board, which the Board now adopts as its ruling in the matter:—

RULING

“In letter dated April 15 the Canadian Car Demurrage Bureau, in paragraph 1, sets out:—

‘The Brantford Cordage Company, Brantford, Ontario, have taken exception to being served with notice of constructive placement by the Canadian National Railways, covering cars containing bonded goods consigned to them, which have not been released by Customs, taking the position that such notice was of no effect, that to be effective same should have been served after Customs had been satisfied.’

“In the closing portion of letter the Car Demurrage Bureau asks for an informal ruling from the Board on the point:

'Is a railway company justified in serving notice of constructive placement to consignee, covering cars containing shipments in bond prior to delivery permit being received from customs?'

"The Brantford Cordage Company in their letter of April 23 state they concur in the request of the Canadian Car Demurrage Bureau for informal ruling on the point mentioned in paragraph 1 of their letter of April 15.

"I quote below relevant portions of the Canadian Car Demurrage Rules and have underlined the words that seem to be applicable to the issue here raised:—

"Rule 2 (b)

'Delivery of cars upon private sidings or industrial interchange tracks shall constitute notification thereof to the consignee. If such delivery cannot be made owing to such tracks being fully occupied, *or from any other cause beyond the control of the carrier*, written notice of readiness so to deliver shall be given and shall constitute notification to the consignee for the purposes of these rules, in which case the free time shall be computed from 7 o'clock a.m. of the first following day.'

"Rule 7 (b)

'Delivery of cars to private sidings or industrial interchange tracks shall be considered to have been made when such cars have been placed thereon, *or when they would have been so placed but for some condition for which the consignee is responsible*. When cars can not be so placed, the carrier shall notify the consignee in writing of its inability to deliver the cars because of the condition of the private siding or interchange tracks, *or because of other conditions attributable to the consignee*. This shall be considered "Constructive Placement".'

"The Brantford Cordage Company having a private siding, under the provisions of demurrage rule 2 (b) delivery of cars upon said private siding constitutes notification thereof to the consignee. If such delivery cannot be made for any cause beyond the control of carrier, written notice of readiness so to deliver shall be given and is of the same effect as a constructive placement notice. Demurrage Rule 7 is more in the nature of an interpretation and is of course related to demurrage rule 2 (b). There would be nothing inconsistent with demurrage rules in giving constructive placement notice and notice of arrival at the same time.

"Delivery of cars to private sidings cannot at times be made because of such tracks being already fully occupied, and also that some cars are being held awaiting clearance by consignee from customs. In this case, under the wording of the rules as above quoted and the underlined portions thereof, I am of opinion that the carrier is entitled to notify the consignee of its inability to deliver the cars because of the condition of the private siding, or because of other conditions attributable to the consignee, which may include, amongst other things, delay in clearance from customs, and that consequently on the point here raised the ruling is that constructive placement notice may, under the conditions described in the rules, be served before cars are cleared from customs, where there is an accumulation of cars for the consignee's private siding, and that it is not incumbent upon the railway to withhold service of such constructive placement notice until after customs requirements have been satisfied.

"The foregoing ruling does not conflict with other provisions of the Car Demurrage Rules or cancel any rights to the consignee accruing thereunder.

"Reference is also made in the letters from the Canadian Car Demurrage Bureau and the Brantford Cordage Company to the matter of the time between customs clearance and actual placing of cars, and on this point there is an apparent dispute between the parties, but the matter is not sufficiently developed to enable a specific statement or ruling to be made on any set statement of facts. The dispute here, as I see it, is not relevant to the right of the railway to serve constructive placement notice either before or after clearance from customs, but on the other hand has to do with computing free time or demurrage time. In this connection the following portions of the Demurrage Rules would be applicable:—

"Rule 4 (h)

'Time lost to the consignor or consignee through switching of cars, or through any other cause for which the railway company is responsible shall be added to the free time allowance.'

"Rule 8

'Demurrage shall not be collected from the consignee for any delays for which Government or railway officials may be responsible.'"

OTTAWA, September 19, 1925.

GENERAL ORDER No. 423

In the matter of the application of the Railway Association of Canada for an order amending the General Order of the Board No. 78, dated July 14, 1911, and General Order No. 394, dated February 8, 1924, prescribing the rules and instructions for the inspection and testing of locomotive boilers and their appurtenances.

File No. 16513

MONDAY, the 31st day of August, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Chief Operating Officer; and upon the consent of the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers, filed,—

The Board orders:

1. That the said General Order No. 78, dated July 14, 1911, be, and it is hereby, amended by striking out clause 12 thereof and substituting the following, namely:—

"12. Time of Testing.—Every boiler, before being put into service and at least after every twelve calendar months' service, provided such service is performed within two consecutive years, shall be subjected to hydrostatic pressure 25 per cent above the working steam pressure."

2. That the said General Order No. 394, dated February 8, 1924, be amended by striking out clause 11 thereof and substituting the following therefor, namely:—

"11. Lagging to be removed.—The jacket and lagging shall be removed after sixty calendar months' service, provided such service is performed within six consecutive years, and a thorough inspection made

of the entire exterior of the boiler while under hydrostatic pressure. The jacket and lagging shall also be removed whenever, on account of indications of leaks, the Board's inspector or the railway company's inspector considers it desirable or necessary."

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 424

In the matter of the application of the Railway Association of Canada for an order amending the General Order of the Board No. 289, dated March 24, 1920, prescribing the rules to be adopted by the railway companies subject to the jurisdiction of the Board, with regard to the inspection of locomotives and tenders.

File No. 21351

TUESDAY, the 8th day of September, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers consenting,—

It is ordered: That the rules relative to the inspection of locomotives and tenders, as approved by the said General Order No. 289, dated March 24, 1920, be, and they are hereby, amended by striking out paragraph 3 thereof and substituting therefor the following, namely:—

"Testing Main Reservoirs.—Every main reservoir, before being put into service, and at least once after twelve calendar months' service, provided such service is performed within two consecutive years, shall be subjected to hydrostatic pressure not less than 25 per cent above the maximum air pressure. The entire surface of the reservoir shall be hammer-tested each time the locomotive is shopped for general repairs, but not less frequently than once after eighteen calendar months' service, provided such service is performed within two consecutive years."

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36805

In the matter of the application of the Express Traffic Association of Canada, hereinafter called the "Applicant," for permission to reissue, on less than statutory notice, its tariff C.R.C. No. E.T.-869, naming express rates on cream between points in the Provinces of Alberta, Saskatchewan, Manitoba, and Ontario (west of and including Port Arthur, Ontario).

File No. 34232

TUESDAY, the 15th day of September, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what has been submitted; and upon its appearing that through clerical error there was omitted from the said Tariff C.R.C. No. E.T.-869 the provision formerly covered by item 2 of the Dominion Express Company's Tariff C.R.C. No. 4666, providing for a five-cent transfer charge at Edmonton for cans handled to and from the Alberta and Great Waterways station; and upon the recommendation of its Chief Traffic Officer,—

The Board orders: That the applicant be, and it is hereby, authorized to reissue its Tariff C.R.C. No. E.T.-869, covering express rates on cream, adding thereto the provision as to transfer charge in question, the tariff in all other respects being unchanged, effective upon three days' notice.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36814

In the matter of the application of C. N. Ham, Chairman of the Express Traffic Association of Canada, Montreal, Quebec, as agent for the express companies subject to the jurisdiction of the Board, for permission to file, on less than statutory notice, revised block rates between stations on the Edmonton, Dunvegan and British Columbia Railway and the Central Canada Railway; also between such stations and stations on other lines of railway, upon what is known as Schedule "B", or Prairie, basis; also for permission to omit symbols in indicating changes in rates.

File No. 34233

THURSDAY, the 17th day of September, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the temporary tariffs now filed do not in all cases contain rates based on Schedule "B", or the prairie basis, and it being desirable that the permanent block tariffs containing the proper rates be made effective as soon as possible,—

The Board orders: That the said agent be, and he is hereby, permitted to file revised block tariffs or supplements to establish the Schedule "B", or prairie, scale of express rates between stations on the Edmonton, Dunvegan and British Columbia and the Central Canada Railways; also between such stations and stations on the lines of other railway companies, upon five days' notice to the public and to the Board.

And the Board further orders: That the indication of changes in rates by means of symbols may be omitted in the said tariffs, or supplements.

H. A. McKEOWN,
Chief Commissioner.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XV

Ottawa, October 15, 1925

No. 15

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ORDER No. 36873

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 179 of the Railway Act, 1919, for leave to close the engine terminals at Depot Harbour and Parry Sound, and to create a new terminal at James Bay, in the Province of Ontario.

File No. 28025.5

THURSDAY, the 1st day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application and what is alleged in support thereof, and upon the report and recommendation of its Chief Engineer,—

The Board orders: That leave be, and it is hereby, granted the applicants to close the engine terminals at Depot Harbour and Parry Sound, and to create a new terminal at James Bay, in the province of Ontario, subject to and upon condition that the rights of any employee claiming financial loss caused to him by change of residence necessitated thereby be reserved for such disposition as the Board, upon application or complaint, deems proper.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36880

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, 1919, for leave to open for the carriage of traffic that portion of the Hanna-Warden Branch from the junction at Warden, mileage 56.59 Stettler Subdivision, southeasterly towards Hanna, a distance of 33 miles.

File No. 17169.12

MONDAY, the 5th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of their Hanna-Warden Branch from the junction at Warden, mileage 56.59 Stettler Subdivision, to Endiang, a distance of 33 miles: provided the speed of trains be limited to a rate not exceeding fifteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36882

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of their Dunblane Central Butte Branch from the junction with their Conquest Subdivision at mileage 59.68, southeasterly towards the South Saskatchewan River, a distance of 11.6 miles.

File No. 19221.193

TUESDAY, the 6th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., Chief Commissioner.
S. J. McLEAN, Assistant Chief Commissioner.

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of their Dunblane Central Butte Branch from the junction with their Conquest Subdivision, at mileage 59.68, southeasterly towards the South Saskatchewan river, a distance of 11.6 miles: provided the speed of trains be restricted to a rate not exceeding fifteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36883

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of their Eston Southeasterly Branch from the junction at mileage 84.32, Elrose Subdivision, to mileage 29.7.

File No. 29410.9

TUESDAY, the 6th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., Chief Commissioner.
S. J. McLEAN, Assistant Chief Commissioner.

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of their Eston Southeasterly Branch from the junction at mileage 84.32, Elrose Subdivision, to mileage 29.7: provided trains be limited to a rate of speed not exceeding fifteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36887

In the matter of the application of the Wholesale Lumber Dealers' Association of Ontario, the Canadian Manufacturers' Association, the Board of Trade of the City of Toronto, and the Montreal Wholesale Lumber Dealers' Association for an Order suspending Supplement No. 28 to the Canadian Freight Association's Tariff C.R.C. No. 36, in so far as it cancels the application of joint rates from points on or via the Canadian Pacific Railway to certain named stations on the Canadian National Railways.

File No. 26615.83

WEDNESDAY, the 7th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading the application and what is alleged in support thereof,—

The Board orders: That the operation of that portion of Supplement No. 28 to the Canadian Freight Association's Tariff C.R.C. No. 36, as contained in pages 3 and 4 thereof, withdrawing the application of joint rates on lumber from points on or via the Canadian Pacific Railway to certain named stations on the Canadian National Railways, effective October 8, 1925, be, and it is hereby, suspended.

H. A. McKEOWN,

Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XV

Ottawa, November 1, 1925

No. 16

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CIRCULAR No. 207

NOV 6 1925

OCTOBER 23, 1925.

File No. 6623

The semi-annual report of equipment required under Circular 169 may now be discontinued.

File No. 27896

Circular 153 is still in effect, and railway companies are reminded that this report is required to be filed promptly at the end of each semi-monthly period prescribed.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

ORDER No. 36888

In the matter of the application of E. C. Inglis, of Foster, in the Province of Quebec, for a reduction in the carload rating provided in the Canadian Freight Classification for poultry shipping crates, set up.

File No. 19367.156

THURSDAY, the 8th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading the application and what is alleged in support thereof; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the Canadian Freight Classification No. 17 be amended to show a reduction in the carload rating on poultry or animal shipping crates, set up, from second to third class, with no change in the minimum carload weight.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36902

In the matter of the application of the Edmonton, Dunvegan and British Columbia Railway Company and the Central Canada Railway Company, under Section 330 of the Railway Act, 1919, for approval of Standard Mileage Freight Tariffs of Maximum Mileage Tolls, on file with the Board under file No. 30186.6.

FRIDAY, the 9th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the Standard Mileage Freight Tariffs, namely, Edmonton, Dunvegan and British Columbia Railway, C.R.C. No. 220, and Central Canada Railway, C.R.C. No. 126, on file with the Board under file No. 30186.6, be, and they are hereby, approved; the said tariffs, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36911

In the matter of the complaint of the Lethbridge Breweries, Limited, against the segregation of liquors, namely, beer, ale, and porter, from aerated and carbonated waters, in the Canadian Freight Classification No. 17.

File No. 34123.33

MONDAY, the 12th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the complaint and what is alleged in support thereof, and the report and recommendation of its Chief Traffic Officer—and upon the consents of the Canadian Freight Association and the Canadian National Railways, filed,—

The Board orders: That the Canadian Freight Classification No. 17 be amended by adding to the distinctive heading, "Liquors," on page 174, the provision for "Water, Mineral or Plain, N.O.I.B.N.," as covered by items 34 to 38 inclusive, page 87, and item 1, page 88.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36935

In the matter of the application of the Nipissing Central Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of the extension of its line of railway from Larder Lake, mileage

22.5, in the Township of McVittie, to Cheminis, mileage 32.3, in the Township of McGarry, both in the District of Temiskaming, and Province of Ontario.

File No. 11014.19

SATURDAY, the 17th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of the extension of its line of railway from Larder Lake, mileage 22.5, in the township of McVittie, to Cheminis, mileage 32.3, in the township of McGarry, both in the District of Temiskaming, and province of Ontario.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36948

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of their Kamloops-Kelowna Branch between Kamloops and Kelowna, a distance of 90.33 miles; and the Lumby Branch, between the junction with the Kamloops-Kelowna Branch and Lumby, a distance of 14.82 miles.

File No. 16388.100

TUESDAY, the 20th day of October, A.D. 1925.

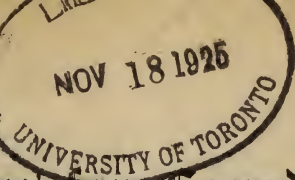
Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic their line of railway as follows, namely: Bostock Junction to Armstrong, 56.45 miles; Vernon to Kelowna, 33.4 miles; Vernon to Lumby, 14.82 miles, including the connections with the Canadian Pacific Railway at Bostock Junction, Armstrong, and Vernon—all in the province of British Columbia.

H. A. McKEOWN,
Chief Commissioner.

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The Board of



Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, November 15, 1925

No. 17

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ORDER No. 36976

In the matter of the application of the Express Traffic Association of Canada approval of Supplement No. 3 to C. N. Ham's Tariff C.R.C. No. E-T. 694, covering regulations for the carriage of small arms ammunition in fibreboard packages, on file with the Board under file No. 1717.12.

SATURDAY, the 24th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer, and reading what is filed in support of the application,—

The Board orders: That the said Supplement No. 3 to C. N. Ham's Tariff C.R.C. No. E-T 694, covering regulations for the carriage of small arms ammunition in fibreboard packages, on file with the Board under file No. 1717.12, be, and it is hereby, approved.

2. That Order No. 34963, dated April 25, 1924, made herein, be, and it is hereby, rescinded.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36979

In the matter of the application of the Burrard Inlet Tunnel and Bridge Company, hereinafter called the "Applicant Company," for approval of its Standard Tariff of Maximum Tolls, C.R.C. No. 1, on file with the Board under file No. 15732.8.

TUESDAY, the 27th day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Tariff of Standard Maximum Tolls, C.R.C. No. 1, on file with the Board under file No. 15732.8, be, and it is hereby approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 36996

In the matter of the application of the Burrard Inlet Tunnel and Bridge Company, hereinafter called the "Applicant Company," under Sections 251 and 276 of the Railway Act, 1919, for authority to use and operate the bridge over the Second Narrows of Burrard Inlet, in North Vancouver, British Columbia; and to open for the carriage of traffic that portion of its line of railway from its temporary connection with the siding of the Canadian Pacific Railway Company on the south shore of Burrard Inlet, Station 1-50 to Station 20-50 on the north shore of Burrard Inlet, a distance of 2,200 feet.

File No. 15732.4

SATURDAY, the 31st day of October, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized—

(a) to use and operate the said bridge over the Second Narrows of Burrard Inlet, in the province of British Columbia; and

(b) to open for the carriage of traffic that portion of its line of railway from its temporary connection with the siding of the Canadian Pacific Railway Company on the south shore of Burrard Inlet, Station 1-50 to Station 20-50 on the north shore of Burrard Inlet, a distance of 2,200 feet.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 37000

In the matter of the application of the Board of Trade of Saint John, New Brunswick, and the Board of Trade of Halifax, Nova Scotia, for an Order directing the Canadian National Railways to withdraw Supplement No. 38 to their Tariff C.G. Rys., C.R.C. No. 1352, eliminating alternative routing via Saint John and Ste. Rosalie Junction to destination points shown on pages 4 and 5 of the said Supplement.

File No. 34285

MONDAY, the 2nd day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed in support of the applications, and the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Supplement No. 38 to the Canadian National Railways Tariff C.G. Rys., C.R.C. No. 1352, eliminating alternative routing via Saint John and Ste. Rosalie Junction to destination points shown on pages 4 and 5 of the said Supplement, be, and it is hereby, suspended, pending a hearing by the Board.

H. A. McKEOWN,

Chief Commissioner.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XV

Ottawa, December 1, 1925

No. 18

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*Application of the Canadian Explosives, Ltd., Montreal, Que., for a reduction
in the rates on High Explosives in Canada*

File 33502

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under the Classification, receipt for carriage of high explosives is at the option of the railway. The rates applicable are then published by individual railways. The description, packing, marking, etc., are to be according to the regulations which the Board has authorized governing the transportation of explosives. Some railways do not carry high explosives. There are also certain articles described as forbidden explosives which the railways do not carry.

While there is no identity of provision in the case of railways who file tariffs covering the handling of high explosives, reference may be made to the tariffs of the Canadian Pacific and Canadian National Railways, under which the bulk of the traffic is handled.

Certain high explosives, e.g., fulminates, detonators, blasting caps, detonating fuses, and ammunition, shot and shell containing explosives, are charged first-class rates, in carloads, and double first-class in less than carloads, based on the rates shown in special class tariffs, or the standard mileage tariff in the absence of special class tariffs. A special basis is also published on Stumping powder. Generally, in the case of high explosives, other than those mentioned, dynamite being the principal item, these articles where accepted for transportation, are charged first-class standard mileage rates for shipments in carloads, both for movements between points in Eastern Canada and in Western Canada. On L.C.L. shipments, most carriers charge double first-class standard mileage rates, although the New York Central Railroad Company charges three times first-class standard mileage rate and the Algoma Eastern Railway Company four times first-class standard mileage rate. For a joint movement over two lines, the combination of the standard mileage rate of each carrier generally governs.

Application is made that the carload rate on high explosives should be reduced from first-class standard mileage rate to first-class ordinary tariff rate. Special class rate tariffs lower than the standard are in effect on the movement of general traffic between a great many points, and it is the first class rate in these lower special tariffs that is applied for.

Dynamite is the commodity especially referred to. In dealing with this, there are two questions to be considered: (1) the application thereto of the ordinary factors of classification, including a comparison with the ratings of articles more or less analogous, and (2) the question of risk.

Dynamite is packed in cases 17½ inches by 13 inches by 9 inches, weighing 58 pounds gross and containing 50 pounds net. The value is \$7.50 per case, or \$15 per 100 pounds. The case has a cubical content of 1.19 cubic feet.

When comparison is made with other items rated as low as 4th or 5th class in carloads, it would appear that the dynamite is of equal or greater weight bulk for bulk; and as to value, approximately the same.

Reference may be made to the fact that various other articles which are covered by the Regulations of the Bureau for the Safe Transportation of Explosives and other Dangerous Articles are classed lower. For example, nitric acid, in glass 4th, in carboys, 5th; charcoal, 7th; gasoline and matches, 5th.

It would not appear that there is such a difference in classification factors as would justify the rate treatment to which exception is taken. Under these circumstances, it is the element of risk in carriage to which attention must be turned.

When high explosives first began to move, the regulations bearing on their safe preparation, packing and carriage were rather sketchy. Since 1909, however, under the sanction of the Board, there has, so far as the movements within Canada are concerned, been operative the Regulations of the Bureau for the Safe Transportation of Explosives and other Dangerous Articles, a code covering the matter. These regulations have from time to time been added to in the direction of more rigorous arrangements in connection with inspection, preparation, and methods of shipment. Another safeguard is the fact that since March 1, 1920, the Dominion Government, under the Explosives Act, passes on the formulæ of all explosives to be manufactured or shipped.

Evidence was given at the hearing by Mr. McMullen, Inspector of the Bureau for the Safe Transportation of Explosives and other Dangerous Articles. His evidence related to the fact that he had at times, in connection with his inspection of storage magazines, condemned certain quantities of explosives, not due to defect in the manufacture originally but through deterioration by being in storage a long time. He stated that as a result of such inspection the quantity of condemned material had been very materially decreased.

His evidence was not directed to the question of whether conditions in connection with the handling of dynamite are, as contended by the applicant, much less dangerous to-day than formerly. However, reference may be made to a communication from Mr. McMullen, dated November 14, 1922, which is on Board's file 1717, pt. 7. This communication has attached to it a letter addressed by him to the General Secretary of the Railway Association of Canada, dated January 20, 1922; and in this communication he refers to the great improvement made in connection with the handling of explosives of the more dangerous class. He stated there had been no fatalities in railway transportation for the year 1921. It may be noted in passing that the statistics quoted cover both Canada and the United States, and no opinion can be formed therefrom as to the relative safety of carriage in the two countries. In his letter, he said:—

"During 1918, a volume of explosives heretofore unknown was handled by the railroads of the United States and Canada with the loss of only one life and a comparatively trifling property damage as compared with previous years such as 1907, when no war existed, and during which year no less than fifty-two railroad men were killed and eighty injured.

"To prove that a vastly improved increased tonnage of explosives required for commercial and military purposes was transported in the United States and Canada with a steadily decreased fatality list, the following figures will be of interest:—

"NUMBER OF PERSONS KILLED IN RAILROAD TRANSPORTATION"

" 1907..	52	1914..	0
1908..	26	1915..	0
1909..	6	1916..	5
1910..	2	1917..	0
1911..	1	1918..	1
1912..	0	1919..	2
1913..	0	1920..	1

"With regard to the five fatalities shown in 1916, it might be explained that this was due to what is known as the 'Black Tom Explosion' which was later proved to have been caused by alien enemies in ill-directed efforts to hamper the movement of munitions to the war front."

Applicant stated that there had been no explosion on Canadian lines since 1907. This was not challenged by the representative of the railway.

On the record, the great danger with dynamite as it used to be manufactured was that the nitro-glycerine content might leak from its absorbent. Now, the nitro-glycerine content of dynamite manufactured by the applicant has been steadily replaced by solid explosives, and not being liquid cannot leak from the cartridges. The following figures are presented:—

	NITRO-GLYCERINE CONTENT
Eastern plant..	1914—36.44%; 1923—29.34%
Western plant..	1912—40.63%; 1923—23.71%

There has also been a change in the relative proportion of the commodities manufactured. Gelatine dynamite, ammonia dynamite, and coal powders are regarded as much safer commodities for carriage. Where in 1911, the nitro-glycerine dynamite was 92 per cent of the total dynamite manufactured in Canada, in 1923 it was 16 per cent. In 1911, ammonia dynamite was 1 per cent, gelatine dynamite 4 per cent, and coal powders 3 per cent. In 1923, the respective percentages were 19 per cent, 55 per cent, and 10 per cent.

The matter as presented has so far relied upon two factors: (1) improved inspection and regulations, (2) technical changes in the art. It is claimed that both of these make for increased safety.

The railways made reference to insurance policies carried by them to protect against losses arising out of carriage of high explosives. The evidence is incomplete, because it does not show whether policies are also carried covering the handling of other dangerous articles.

Exhibits were filed by the railways (Nos. 6-10 inclusive) setting out in substance that the fact that the losses on high explosives had been small during the past seven years (see Exhibit 3 filed by applicant) was not conclusive, unless the volume of traffic was also put forward. The statistics presented, however, are not conclusively helpful since the exhibits relied upon by the railways do not differentiate between the United States losses and Canadian losses. Subject to this explanation, it may be said that exhibit 6 as filed shows the following detail as averaged over the period 1918 to 1922:—

	Average production in 1,000 tons	Loss per ton c.
Black powder..	99	0.155
High explosives..	99	0.338
Charcoal..	243	0.075
Gasoline..	15,257	0.046
Matches..	116	0.414
Nitric acid..	15	2.114
Alcohol..	167	0.625

Exhibit 3 filed by the applicant, dealing also with the transportation of dangerous articles in the United States and Canada (data from Report of the Bureau of Explosives) shows for the period 1917 to 1923 detail as to losses which may be summarized as follows:—

Dangerous Articles Amount	Gasolene Amount	High explosives Amount	High explosives. Proportion of. Total	Compared with Gasolene
\$9,257,715	\$4,778,173	\$ 166,856	1.8%	3.5%

As compared with gasoline, the losses from high explosives are shown as 3.5 per cent. Of the total losses from high explosives, amounting to \$166,856 in the seven-year period, \$141,625 are to be found in 1921. The years 1917, 1918, and 1923 had the balance. Of this balance of \$25,231, \$12,200 are to be found in the year 1923. The years 1920 and 1922 are exempt from losses. The tabular summary of gasoline shows annual losses varying from a minimum of \$367,862 to a maximum of \$882,894.

Reference has been made to the high figure for 1921, which it was testified was caused by a railway, absolutely contrary to instructions and regulations, putting a car of dynamite next the engine. Subsequently, there was a head-on collision. The dynamite did not explode on the impact. The car, however, took fire; the dynamite ignited; and explosion took place.

As pointed out, the general detail given relates both to the United States and to Canada. For Canada alone, some detail was given in evidence. It was testified that for the year 1923, with a total carriage of approximately 27,000,000 pounds of dynamite, there was a loss of \$558.23, due to a head-on collision in which, however, there was no explosion. During the last ten years, the losses are placed at approximately \$5,000. It was further testified that none of the dynamite concerned had exploded.

At one time, shipments of high explosives had to be accompanied by an attendant, who was given free transportation by the railway. This arrangement does not now exist.

It was also stated that some years ago the shippers received a reduction of 15 per cent on the rate, in consideration of their supplying a bond of indemnity to the railway. The bond was to be one "indemnifying it against loss or expense by reason of damage or injury to its property or to persons, or to property for which it is responsible, caused by such explosives." This arrangement is no longer required. As this was referred to only in an outline way, it would not seem proper to make a definite deduction as to the significance of this arrangement while it existed, or to express any opinion as to what weight should be given to the fact that it no longer exists.

It appears that on account of the conditions which have been outlined, there has been a distinct improvement in the minimizing of the risk factor, and that this may be given weight in connection with the question of the rates. With a view to carrying this out, an order should issue directing the railway companies to amend their tariffs on high explosives so that the rates published therein will not exceed the current published first-class rates, where lower than standard mileage rates, on carload shipments; that with respect to less than carload shipments, there should be no change in the present basis of the various lines, but the rates should be based on the current class rates where lower than standard mileage rates; that the carload commodity rates from James Island and Powder Point, B.C., to stations in Western Canada be based on the present arbitrary to Vancouver plus current first-class rates, in lieu of being constructed, as at present, on the arbitrary plus first class standard mileage rates.

NOVEMBER 3, 1925.

Chief Commissioner McKeown and Commissioner Boyce concurred.

GENERAL ORDER No. 425

In the matter of the application of the Canadian Explosives, Limited, of Montreal, in the Province of Quebec, for a reduction in the rates on High-Explosives in Canada.

File No. 33502

FRIDAY, the 13th day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, December 16, 1924, the Canadian Explosives, Limited, the Canadian Freight Association, and the Canadian National Railways and Canadian Pacific Railway Company being represented at the hearing, and what was alleged; and upon the report of its Chief Traffic Officer,—

The Board orders: That all railway companies subject to the jurisdiction of the Board be, and they are hereby, required to amend their tariffs on high explosives, so that the rates published therein shall not exceed the current published first-class rates, where lower than standard mileage rates, on carload shipments; that, with respect to less than carload shipments, there shall be no change in the present basis of the various lines, but the rate shall be based on the current class rates where lower than standard mileage rates; and that the carload commodity rates from James Island and Powder Point, British Columbia, to stations in Western Canada, be based on the present arbitrary to Vancouver, plus current first-class rates, in lieu of being constructed, as at present, on the arbitrary plus first-class standard mileage rates.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37031

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of their Cowichan Bay Branch from a connection with the Cowichan Subdivision, at mileage 58.3, near Deerholme, British Columbia, to a point on Cowichan Bay, a distance of 6.56 miles; and south leg of the wye at the junction with the Cowichan Subdivision, a distance of 0.16 of a mile.

File No. 27847.30

WEDNESDAY, the 4th day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of their Cowichan Bay Branch from a connection with the Cowichan Subdivision, at mileage 58.3, near Deerholme, in the province of British Columbia, to a point on Cowichan Bay, a distance of 6.56 miles; and the south leg of the wye at the junction with the Cowichan Subdivision, a distance of 0.16 of a mile: provided the speed of trains be limited to a rate not exceeding twenty miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37032

In the matter of the application of the Canadian Northern Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Cowichan Subdivision from mileage 73.2 to 82.8.

File No. 27847.31

WEDNESDAY, the 4th day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Cowichan Subdivision from mileage 73.2 to 82.8: Provided the operation of trains over the said line be limited to a rate of speed not exceeding twenty miles an hour.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 37025

In the matter of the application of the Maine Central Railroad Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff No. 3, Supplement No. 5 to C.R.C. No. 214, on file with the Board under file No. 33693.

THURSDAY, the 5th day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Supplement No. 5 to the applicant company's Local Standard Passenger Tariff C.R.C. No. 214, on file with the Board under file No. 33693, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 37026

In the matter of the application of the Maine Central Railroad Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, 1919, for approval of Supplement No. 1 to its Standard Tariff of Maximum Sleeping and Parlour Car Tolls, C.R.C. No. S-4, on file with the Board under file No. 33693.

THURSDAY, the 5th day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Supplement No. 1 to the applicant company's Standard Tariff of Maximum Sleeping and Parlour Car Tolls, C.R.C. No. S-4, on file with the Board under file No. 33693, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37027

In the matter of the application of the Maine Central Railroad Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, 1919, for approval of Supplement No. 2 to its Standard Freight Mileage Tariff, C.R.C. No. 2087, on file with the Board under file No. 33693.

THURSDAY, the 5th day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Supplement No. 2 to the applicant company's Standard Freight Mileage Tariff, C.R.C. No. 2087, on file with the Board under file No. 33693, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37058

In the matter of the application of the Edmonton, Dunevegan & British Columbia Railway Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, 1919, for approval of Supplement No. 2, to its Local Standard Passenger Tariff C.R.C. No. S-3, on file with the Board under file No. 30186.3.

WEDNESDAY, the 18th day of November, A.D. 1925.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Supplement No. 2 to its Local Standard Passenger Tariff C.R.C. No. S-3, on file with the Board under file No. 30186.3, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

THOMAS VIEN,

Deputy Chief Commissioner

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XV

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No. 19

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent. discount. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the Chief Accountant, Department of Public Printing and Stationery, Ottawa. Remittances to be made payable to the order of the Chief Accountant, P.O. Money or Postal Orders preferred. Cheques or drafts must be made payable at par at Ottawa. Postage Stamps will not be accepted.

ORDER No. 37076

DEC 18 1925

In the matter of the application of the Quebec Central Railway Company, hereinafter called the "Applicant Company," for permission to make correction in rates on soapstone, in carloads, from Leeds and Robertson, Quebec, to Montreal and Windsor Mills, Quebec, on less than statutory notice.

File No. 3079.77

SATURDAY, the 21st day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company be, and it is hereby, granted leave to issue forthwith a supplement to its Tariff C.R.C. No. 924, correcting error in the said rates on soapstone, in carloads, from Leeds and Robertson, Quebec, to Montreal and Windsor Mills, Quebec, on less than statutory notice; such supplement to be effective as of the date of the said Tariff C.R.C. No. 924, namely December 4, 1925; and the title page of the supplement to bear a note to the effect that it is issued under the authority of this order, to correct printer's error.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37083

In the matter of the application of the Algoma Central and Hudson Bay Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway (revised main line) from mileage 103.80 to 104.79.

File No. 17990.13

MONDAY, the 23rd day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, concurred in by its Chief Engineer; and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of the revision of its line of railway from mileage 103.80 to 104.79, a distance of 0.99 miles.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37087

In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement No. 4 to the Express Traffic Association of Canada Tariff C.R.C. No. ET-694, covering regulations for the transportation by express of acids, inflammables, oxidizing substances, and samples of explosives, on file with the Board under file No. 1717.12.

TUESDAY, the 24th day of November, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said proposed Supplement No. 4 to the Tariff C.R.C. No. ET-694 of the Express Traffic Association of Canada, covering regulations for the transportation of acids, inflammables, oxidizing substances, and samples of explosives by express, on file with the Board under file No. 1717.12, be, and it is hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37104

In the matter of the application of the Atlantic, Quebec and Western and the Quebec Oriental Railway Companies, hereinafter called the "Applicants," under Section 334 of the Railway Act, 1919, for approval of Standard Passenger Tariff C.R.C. No. 16 of the Atlantic, Quebec and Western Railway, and C.R.C. No. 12 of the Quebec Oriental Railway, on file with the Board under file No. 13738.6.

TUESDAY, the 1st day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Standard Passenger Tariffs, namely, C.R.C. No. 16 of the Atlantic, Quebec and Western Railway Company, and C.R.C. No. 12 of the Quebec Oriental Railway Company, on file with the Board under file No. 13738.6, be, and they are hereby, approved; the said tariffs, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37105

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 334 of the Railway Act, 1919, for approval of Standard Passenger Tariff C.R.C. No. E-866, amending Tariff C.R.C. No. E-542, covering maximum passenger fares in the City of Niagara Falls, including the Township of Stamford, in the Province of Ontario.

File No. 34322

WEDNESDAY, the 2nd day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Standard Passenger Tariff of the applicants, C.R.C. No. E-866, amending Tariff C.R.C. No. E-542, covering the maximum passenger fares in the city of Niagara Falls, including the township of Stamford, in the province of Ontario, on file with the Board under file No. 34322, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37106

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 334 of the Railway Act, 1919, for approval of Standard Passenger Tariff C.R.C. No. E-867, amending C.R.C. No. E-542, covering maximum passenger fares in the City of St. Catharines, Province of Ontario.

File No. 34322

WEDNESDAY, the 2nd day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Standard Passenger Tariff of the applicants, C.R.C. No. E-867, amending Tariff C.R.C. No. E-542, covering maximum passenger fares in the City of St. Catharines, in the province of Ontario, on file with the Board under file No. 34322, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37109

In the matter of the application of the Bathurst Company, Limited, of Bathurst, New Brunswick, and F. C. Cornell, Maritime Transportation Rights Committee for an Order suspending Supplement No. 48 to the Canadian National Railways Tariff (C.G.R.) C.R.C. No. 1364, in so far as it proposes, effective December 18, 1925, to eliminate alternative routing via Ste. Rosalie Junction to destination points shown on pages 5, 6, and 7 of the said Supplement.

File No. 34285

WEDNESDAY, the 2nd day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer, and reading what is filed in support of the application,—

The Board orders: That the said Supplement No. 48 to the Canadian National Railways Tariff (C.G. Rys.) C.R.C. No. 1364, in so far as it proposes, effective December 18, 1925, to eliminate alternative routing via Ste. Rosalie Junction to destination points shown on pages 5, 6, and 7 of the said Supplement, be, and it is hereby, suspended, pending hearing by the Board.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37124

In the matter of the application of the Grand Trunk Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic a revision of its main line between mileage 231.88 and 233.52 Miniota Subdivision, a distance of 1.65 miles.

File No. 33428.1

THURSDAY, the 3rd day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a revision of its main line between mileage 231.88 and 233.52 Miniota Subdivision, a distance of 1.65 miles.

H. A. McKEOWN,
Chief Commissioner.

CIRCULAR No. 208

December 3, 1925.

Changes in Train Service

File No. 24942

The Board, from time to time, is in receipt of complaints in regard to reductions, and other changes, in train services, and on account of the short time between the date the notices are issued by the railway companies, and the effective date of the said reductions, or other changes, sufficient time in many cases is not given to complete investigation and consideration of submissions made by the parties opposing, the Board has found it necessary to intervene and direct that the proposed reductions, or other changes, be deferred pending investigation and disposal.

The railway companies are required to show cause why they should not provide for notice as follows in the case of the withdrawal or reducing of the train service given on any portion of the companies' lines:—

In Western Territory, thirty days' notice to the public and twenty-five days' notice to the Board.

In Eastern Territory, twenty days' notice to the public and fifteen days' notice to the Board.

In addition they are required to show cause why, in the case of a reduction in the number of trips per week, or the withdrawal of any particular train, other than a seasonal change, a circular notice should not also be sent to the different municipalities interested.

Where it can reasonably be done a representative of the company should discuss with the Municipal Council or Board of Trade the reason and necessity for the proposed reductions in the service.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

1894

The following is a list of the books in the collection of the New York Public Library, Astor Lenox Tilden Foundation, which were purchased by the Library during the year 1894. The books are arranged in alphabetical order of the author's name.

1. *History of the United States*, by John Fiske. New York: Charles Scribner's Sons, 1894.

2. *The Life of George Washington*, by John Fiske. New York: Charles Scribner's Sons, 1894.

3. *The Life of Thomas Jefferson*, by John Fiske. New York: Charles Scribner's Sons, 1894.

4. *The Life of Andrew Jackson*, by John Fiske. New York: Charles Scribner's Sons, 1894.

5. *The Life of Martin Van Buren*, by John Fiske. New York: Charles Scribner's Sons, 1894.

6. *The Life of James K. Polk*, by John Fiske. New York: Charles Scribner's Sons, 1894.

7. *The Life of Zachary Taylor*, by John Fiske. New York: Charles Scribner's Sons, 1894.

8. *The Life of Millard Fillmore*, by John Fiske. New York: Charles Scribner's Sons, 1894.

9. *The Life of Fremont*, by John Fiske. New York: Charles Scribner's Sons, 1894.

10. *The Life of James Buchanan*, by John Fiske. New York: Charles Scribner's Sons, 1894.

11. *The Life of Abraham Lincoln*, by John Fiske. New York: Charles Scribner's Sons, 1894.

12. *The Life of Andrew Johnson*, by John Fiske. New York: Charles Scribner's Sons, 1894.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of Domestic Hardwoods, Inc. New York, N.Y., re alleged overcharge on lumber, carloads

File No. 3425f

REPORT OF THE CHIEF TRAFFIC OFFICER

This Report is issuing as the

JUDGMENT

of the Board in this matter.

The matter here at issue concerns the complaint of Domestic Hardwoods, Inc., New York, N.Y., per Harold H. Orvis & Bros., re alleged excessive charges assessed and collected on cars G.T. 12517 and C.N. 404592, containing lumber shipped from Otterburn siding, Temiscouata Railway, on November 24, 1924, consigned to Detroit, Mich.

The rate charged was $42\frac{1}{2}$ cents per 100 pounds and a rate of 40 cents per 100 pounds is claimed by complainants. At the time these shipments moved, Temiscouata Railway tariff C.R.C. No. 489 named a rate on lumber, carloads, of $42\frac{1}{2}$ cents per 100 pounds from Otterburn to Detroit, with routing via Riviere-du-Loup and Canadian National Railways. There is no tariff naming specifically a commodity rate on lumber from Otterburn to Detroit via Edmundston and Canadian Pacific Railway, but there was in effect, when these shipments moved, Temiscouata Railway tariff C.R.C. No. 535, which named a rate of 40 cents per 100 pounds from Otterburn to Pittsburgh, Pa., with routing via Edmundston, Canadian Pacific Railway and Detroit, Mich., and under the rule in said tariff as to rates to intermediate points, said rate would apply as maxima to Detroit, Mich.

Complainants state that before the shipments in question were made, shippers' representative interrogated the Temiscouata Railway's agent at point of origin as to the rate from Otterburn to Detroit, and was told that the rate would be $42\frac{1}{2}$ cents per 100 pounds whether routed via Canadian National Railway or Canadian Pacific Railway; that on the strength of this, two Canadian National cars were ordered and loaded. During this interval, shippers' representative received advice from his New York office to route the cars via Canadian Pacific Railway on account of a lower rate being applicable that way. The original shipping orders supplied by shippers' representative and made out by them show the cars routed via Canadian National Railways for Wabash

delivery at Detroit, and while shippers' representative states he asked the Temiscouata agent to route the cars via Edmundston and Canadian Pacific Railway, the Temiscouata refused to do so, and forwarded the cars via Riviere-du-Loup and Canadian National Railways. The routing as shown on the shipping orders and as above referred to was not altered. Complainants claim protection of the lower rate, viz., 40 cents per 100 pounds.

The railway company dispute the rate quotation, claiming their agent did not advise shippers' representative that the rate was the same via both routes. However, regardless of the facts on this point, the ruling of the Board, in my opinion, should be that the rate legally tariffed via the route the shipments travelled would be applicable, and it is not within the power of the Board to direct refund to the basis of any lower rate. It is unfortunate if there was any misunderstanding or error in rate quotation, but the Railway Act provides that tariffs shall be open to public inspection, and the obligation is upon the railway company to charge and collect the rates legally filed and published therein. On the question of protection of erroneous rate quotations, the Board has in a number of cases made ruling:—

“Under date of April 8, 1925, the Board advised Messrs. Nolan & Cunnings that the express company was obliged under the Railway Act to charge and collect the rate legally filed and published, and its employees are not allowed to vary from the rate so legally filed and published in the tariff, and that the Board, therefore, had no power to direct the express company to refund the difference between the rate legally filed and published and the rate which, on the documents filed was quoted to the applicant by an employee of the express company.

The applicant was further advised that whether or not he would have any redress against the employee of the express company who quoted the erroneous rate was a matter which fell within the scope of a court of competent jurisdiction, and that the Board, therefore, was unable to express any opinion on this phase of the matter.

NOTE.—The above informal ruling is in consonance with the ruling made by the Board in 1906 in the matter of erroneous rate quotations, file No. 3079, in which it was held that the erroneous quotation of a rate may possibly have been *bona fide*, and it may possible have been acted upon by the shipper without knowledge of the error, or the whole transaction may have been a device for giving or receiving a lower rate than that in the published tariffs and ordinarily charged to shippers, and that the proper policy of the Board is to recognize only the tariff rates and to leave parties who claim to have shipped under special contracts, or to have been misled by false information, to the courts for relief. This ruling has been followed in similar cases since that date.”

Vol. XV, Board's printed Judgments and Orders, at p. 39

As to the contention of complainants that these cars should have been forwarded via Edmundston and Canadian Pacific Railway, rather than via Riviere-du-Loup and Canadian National Railways, the record indicates that while shippers' representative requested the Temiscouata Railway's agent to forward via the routing first named, the agent declined to do so; the original orders as made out by shippers' representative specifically indicated routing via Canadian National Railways to Detroit, Wabash delivery, and these routing instructions were not altered. The Temiscouata Railway point out that shippers' representative having ordered cars for routing via Canadian National Railways, and that company, in turn, having requested the Canadian National Railways to furnish the necessary empty cars at Riviere-du-Loup, which they then hauled empty to shipping point, they were obligated, when these cars were loaded, under the

provisions of the car service rules of the American Railway Association to forward them via the Canadian National Railways. Complainants suggest that these car service rules are not always complied with and, in any event, are not registered with this Board. The code of car service rules of the American Railway Association provides that "foreign cars at home on a direct connection must be forwarded to the home road loaded or empty". With certain exceptions, which are not particularly relevant to this issue, the whole tenor of these rules is to provide for loading via a route which will enable the home road to participate in the freight rate. Canadian National cars having been ordered, supplied, placed and loaded, I consider the Temiscouata Railway were within their rights in insisting on the cars being then forwarded via Canadian National Railways, or, as an alternative, that the lumber be unloaded and reloaded in cars which, under the code of car service rules, could properly be routed via Canadian Pacific Railway. A situation such as here described would appear to have been specifically contemplated and provided for in the Canadian Car Demurrage Rules, authorized by this Board's General Order No. 201, dated August 1, 1917, Rule 4 (g) thereof reading: —

"When an empty foreign car is placed for loading via a specific route, so as to protect the ownership of car according to Car Service Rules, when loaded is offered for transportation by any other route, demurrage shall be charged until the car is unloaded without any free time allowance."

I consider, therefore, that under the circumstances of this case, to obtain the benefit of the lower rate it would have been incumbent upon shippers to have unloaded the cars that were furnished and reloaded into other cars that could properly route via Edmundston and Canadian Pacific Railway; that this action not having been taken, the legal rate applicable was assessed, and the complaint should be dismissed.

W. E. CAMPBELL,
Chief Traffic Officer.

OTTAWA, December 15, 1925.

ORDER No. 37143

In the matter of the application of the Canadian National Millers Association for an Order suspending the Canadian National Railways' tariff, C.R.C. No. E-709, Supplement 14, effective December 7, 1925, covering rates on grain products from Port Colborne, Ontario, to Buffalo, New York.

File No. 17112.38.

SATURDAY, the 5th day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application,—

The Board Orders: That the said Supplement No. 14 to the Canadian National Railways' Tariff C.R.C. No. E-709, in so far as it covers rates on grain products from Port Colborne, Ontario, to Buffalo, New York, be, and it is hereby, suspended pending a hearing by the Board.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37154

In the matter of the application of the Quebec Central Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, 1919, for approval of its proposed Standard Freight Mileage Tariff, C.R.C. No. 928, on file with the Board under file No. 29641.

SATURDAY, the 12th day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said proposed Standard Freight Mileage Tariff, C.R.C. No. 928, on file with the Board under file No. 29641, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37159

In the matter of the Order of the Board No. 37143, dated December 5, 1925, suspending Supplement No. 14 to the Canadian National Railways' Tariff C.R.C. No. E-709, in so far as it covers rates on grain products from Port Colborne, Ontario, to Buffalo, New York.

File No. 17112.38

MONDAY, the 14th day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the withdrawal by the Canadian National Millers' Association of its complaint to the Board objecting to the putting into effect of Item 35-B to the said Tariff C.R.C. No. E-709,—

The Board orders: That the said Order No. 37143, dated December 5, 1925, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 37169

In the matter of the application of the Brantford and Hamilton Electric Railway Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff C.R.C. No. 6, on file with the Board under Case No. 3477.

WEDNESDAY, the 16th day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Passenger Tariff C.R.C. No. 6, on file with the Board under Case No. 3477, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37164

In the matter of the Order of the Board No. 37109, dated December 2, 1925, suspending Supplement No. 48 to the Canadian National Railways' Tariff C.R.C. No. 1364, in so far as it proposes, effective December 18, 1925, to eliminate alternative routing via Ste. Rosalie Junction to destination points shown on pages 5, 6, and 7 of the said Supplement.

File No. 34285

THURSDAY, the 17th day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed on behalf of the Canadian Lumbermen's Association and the Maritime Transportation Rights Committee; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Order No. 37109, dated December 2, 1925, be, and it is hereby, amended by adding the words "and St. John" after the word "Junction" in the fourth line of the operative part of the order.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37173

In the matter of the application of the Canadian National Railway Company, hereinafter called the "applicant company", under section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic the Loverna Westerly Branch from mileage 104.06 westerly to Hemaruka, a distance of 50 miles.

File No. 15832.24

FRIDAY, the 18th day of December, A.D. 1925.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to carry traffic over that portion of its Loverna Westerly Branch from mileage 104.06 westerly to Hemaruka, a distance of fifty miles; provided trains operated over the said line be restricted to a rate of speed not exceeding twelve miles an hour.

H. A. McKEOWN,
Chief Commissioner.

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Great Northern Railway Company for permission to discontinue train service, Vancouver to White Rock, British Columbia, known as the "Campers' Special." Heard at Vancouver, B.C., on July 13th, 1925, by Commissioner Oliver, by special authority of the Board.

File No. 19737

JUDGMENT

COMMISSIONER OLIVER:

This matter was heard in Vancouver on July 13, 1925, by Commissioner Oliver, under special authority from the Board.

The contentions of the railway company were:—

(1) That the "Campers' Special" which was formerly operated at a profit, now shows a yearly increasing loss;

(2) That this loss of revenue is caused by motor bus competition, and occurs although the bus rate is higher than the railway fare, and although the population of the sea beach resorts mentioned has substantially increased during the years in which this "Campers' Special" has been operated;

(3) That the regular railway services of three trains a day to and from Vancouver give ample accommodation to Crescent (flag stop), and to White Rock (all stop).

(4) That Ocean Park is only one mile from Crescent and that therefore a stop at Ocean Park, as well as at Crescent would be undue interference with the schedules of their two fast daylight trains, while the proximity of Ocean Park to the flag stop of Crescent gives a fair measure of accommodation to the residents of Ocean Park.

(5) That the slower night train makes a flag stop at Ocean Park both ways and that the fast train which leaves Vancouver at 4 p.m. would be stopped on flag at Ocean Park during the holiday season, if the "Campers' Special" were withdrawn.

For the retention of the "Campers' Special" it was urged,—

(1) That the service was a great convenience to residents of Vancouver and Westminster who desired to give their families or themselves the advantage of rural residence with sea bathing during the summer holiday season.

(2) That the communities of White Rock, Ocean Park and Crescent had been largely built up on the service given the summer residents by the "Campers' Special," as the hours of arrival and departure of the regular trains were not as convenient as those of the "Special," White Rock having attained a population of 1,000.

(3) That the community of Ocean Park comprises a summer school enterprise in which a number of the Vancouver city churches are jointly concerned, and that owing to the non-stop of the two fast day trains this enterprise was especially interested in the maintenance of the services of the "Special";

(4) That while there was a bus service from Vancouver and Westminster to White Rock, there was no bus service to Crescent or Ocean Park owing to the greater distance of these points from the international highway. There is no direct highway connection between the three points.

The rail distance from Vancouver to Crescent is 28, to Ocean Park 29, and to White Rock 33 miles.

The rail fare Vancouver to White Rock and return is \$1.15, or 40 cents single if a book of twenty tickets is purchased. The bus fare is 75 cents single.

Regular trains leave Vancouver daily at 9 a.m. and 4 p.m. for Seattle, and returning from Seattle leave White Rock at 2.30 p.m. and 10.45 p.m. These trains stop at White Rock regularly and at Crescent on flag.

A regular train which leaves Vancouver at 12.01 a.m. (midnight), daily, stops on flag at Ocean Park at 1.20 a.m. Returning it stops on flag at Ocean Park at 6.10 a.m. arriving in Vancouver at 7.55 a.m.

A statement of earnings and expenses of the "Campers' Special," and "Dominion Day Special" for the seasons of 1923, 1924 and 1925 has been submitted by the railway under date of September 30, 1925, as follows:—

Year	Earnings	Expenses	Profit	Loss
1923..	\$6,933.66	\$4,006.59	\$2,927.07	
1924..	4,150.96	4,527.06	.....	\$ 377.10
1925..	3,697.16	4,980.92	.....	1,283.76

It will be observed from these figures that the earnings of 1925 are only a little more than half those of 1923, while expenses have increased nearly one-fourth.

Even if the expenses of 1925 were the same as those of 1923, there would still be a substantial loss on operation in 1925.

The progressive decrease in the earnings of the "Special," although the population to be served has admittedly increased, while the rail rates are substantially lower than those of the competing bus service, would seem to indicate that the new conditions arising from the improved highway, and the popular preference for motor service have created an impossible situation for the railway and imposed recurring, increasing and unavoidable losses on operation of the "Campers' Special."

On the other hand is urged the claim that important investments have been made on the strength of the service of the "Special," and that its withdrawal would be prejudicial to the many interests involved.

Both the railway applicants and the residents opposing the application are entitled to the fullest consideration by the Board, in the difficult situation that has arisen.

It would appear that the railway is in no way responsible for that situation; they give a satisfactory service at a charge substantially lower than that made by their competitors. The situation has arisen because an increasing number of the people interested in the three seaside resorts have seen fit to depend upon motor bus rather than on railway transportation. If the railway were to blame for that choice, it might fairly be penalized by being compelled to operate a loosing service. It is true that the suggestion was made that the railway did

not give adequate favourable publicity to the service of the "Campers' Special," but it does not seem to me that that suggestion was sufficiently supported.

In my opinion, it would be essentially unfair to penalize the railway for the change of conditions for which it is in no way responsible, by compelling it to carry on a losing service for the special convenience of those who by the diversion of their patronage have made the "Campers' Special" a loss to the railway.

It is to be observed that the regular north bound night train is timed to leave White Rock for Vancouver at 5.55 a.m. arriving at Vancouver at 7.55 a.m. This train is scheduled to make flag stops at Ocean Park as well as at Crescent. The "Special" left White Rock at 7 a.m. an hour later, and was therefore to that extent more convenient. But, barring the difference of the earlier hour, the regular northbound "Owl" train meets the needs of persons whose occupation is in Vancouver when the summer holidays are over as well as did the "Campers' Special" during the holidays.

The regular afternoon train leaves Vancouver for Seattle at 4 p.m., daily, with flag stop at Crescent, and reaches White Rock at 5.20 p.m. The "Special" left shortly after 5 o'clock. This was a more convenient hour than that of the regular train, but 4 p.m. is an hour after the banks close and would permit the use of the train by a large proportion of the persons desiring to reach White Rock or Crescent who have employment in Vancouver. For the period of the summer holiday season the railway offers to make Ocean Park, as well as Crescent, a flag stop for this train.

With the evening train making a flag stop at Ocean Park, the same number of hours per day would be allowed at Vancouver and at the seaside resorts, by the regular train service, as by the "Special." The only difference would be an hour earlier in Vancouver in the morning and an hour earlier at the seaside at night.

It does not appear to me that under the circumstances the greater inconvenience to the public resulting from the withdrawal of the "Campers' Special" is sufficient warrant for compelling the railway to operate the train at a loss.

I am therefore of the opinion that the application of the Great Northern Railway for leave to discontinue the operation of trains running between Vancouver and White Rock, known as the "Campers' Special" should be granted, subject to the conditions,—

(1) That during the period from June 15 to September 15 in every year, the afternoon train from Vancouver to Seattle shall not leave Vancouver at an hour earlier than 4 p.m.;

(2) That it shall make a flag stop at Ocean Park during that period and at Crescent the year around;

(3) That other stops of all trains on this line remain as at present.

OTTAWA, October 8, 1925.

Chief Commissioner McKeown, Asst. Chief Commissioner McLean, Deputy Chief Commissioner Vien, and Commissioner Lawrence concurred.

Application of the New York Central Railroad Company for a ruling of the Board regarding refund of freight charges on a car of potatoes shipped from Chambord Junction, Que., to Newington, Ont., on October 6, 1921.

File 23414.24

REPORT OF THE CHIEF TRAFFIC OFFICER, DATED NOVEMBER 16, 1925, WHICH IS ISSUED AS THE INFORMAL RULING OF THE BOARD

On October 6, 1921, at which time the Canadian National and Grand Trunk Railways were separately operated, a car of potatoes was shipped from Chambord Junction, Que., to Newington, Ont., no routing being specified by shipper. There were no through rates in effect from point of origin to destination via any route. Chambord Junction is a station on the Jonquire Division of the Canadian National Railways, formerly the Quebec and Lake St. John Railway. Newington is a local point on the Ottawa and New York Railway.

The car was handled via Canadian National Railways to Ottawa, thence Ottawa and New York Railway to destination. The rate charged was the combination of a mileage rate from Chambord Junction to Rivière à Pierre plus published joint rate of 8th class from point last named to Newington, Ont., as per Canadian National Tariffs C.R.C. Nos. E-281 and E-854, respectively, the combination rate via this route being $57\frac{1}{2}$ cents per 100 pounds. The New York Central state consignee claimed the benefit of a through rate of 52 cents, made up of a combination of joint rate of 8th class rate of 42 cents per 100 pounds from Chambord Junction to Cornwall Junction, as contained in Canadian National Railways' Tariff C.R.C. No. E-160, plus 8th class rate of 10 cents per 100 pounds, Cornwall Junction to Newington, per N.Y.C.R.R. Tariff C.R.C. No. 2269.

Via the route the car moved it will be observed this car, which originated on the Canadian National Railways, was carried by them to Ottawa, being there delivered to the Ottawa and New York Railway for carriage thence to destination on that line.

The claimed rate would be made up of a three-line haul, viz., Canadian National, Grand Trunk, and Ottawa and New York Railways. It appears that the Ottawa and New York, without taking the matter up with the Canadian National Railways, paid the consignee's claim and billed the Canadian National Railways with the amount on account of alleged misrouting on their part.

Subsequently, the consignee has gone out of business and the matter is now one as between the two railway companies in question.

I do not know how the alleged combination of 52 cents is arrived at. In Canadian National Railways' Tariff C.R.C. No. E-160, which is referred to as authority for the 42-cent rate from Chambord Junction to Cornwall Junction, I find no rate whatever published from Chambord Junction to Cornwall Junction. As a matter of fact, there are no rates published from Chambord Junction to stations Dorval to Cardinal inclusive. There was an 8th class rate published to Prescott which, at the time this shipment moved, was 43 cents per 100 pounds, and although the tariff is described as a "Competitive, Joint Freight Tariff," I am of the opinion that possibly under the provisions of section 329 of the Railway Act the rate to Prescott should apply as maxima to intermediate points in the direct line of transit.

The Board have on a number of occasions dealt with cases involving alleged misrouting and the ruling or decision made has been based in each instance on the facts of the particular case. Interstate Commerce Commission conference ruling No. 214 (c) reads, in part, as follows:—

"In the absence of specific through routing by shipper, which the carrier is willing to observe, it is the duty of the agent of the carrier to

route the shipment via the cheapest reasonable route known to him of the class designated by the shipper, that is, all rail or rail and water, and via which he has rates which he can lawfully use. . . . If agent is in doubt he should secure information from proper officers of the traffic department."

The Canadian National Railways, in refusing to reimburse the New York Central, take the position that there was no misrouting; that in the absence of specific routing instructions from shipper and no published through rate in existence via any route the agent properly forwarded the shipment via the direct connection between the Canadian National and New York Central lines.

As already mentioned, at the time this shipment moved the Grand Trunk Railway was not part of the Canadian National Railways, and since the latter line had direct connection with the Ottawa and New York Railway at Ottawa, and a through rate was available via combinations on Rivière à Pierre Junction on the Canadian National Railways, and as the agent would have no knowledge of what combination might be available via Cornwall Junction, I think the agent and the railway were justified in handling the car via the route it travelled. As already pointed out, I cannot find that there was any specific rate of 42 cents published from Chambord Junction to Cornwall Junction. It would only be by interpreting the tariff in conjunction with section 329 of the Railway Act (even if proporely applicable, in view of the description of the tariff already alluded to) as applying the Prescott rate as maximum to Cornwall Junction that a combination on Cornwall Junction would be arrived at, and such combination would be 1 cent higher than claimed.

In view of the facts of this particular case, it is my opinion that there was no misrouting of this car, and that if the Canadian National Railways are unwilling to assume any part of the amount refunded by the New York Central Railroad the Board would not be warranted in making any direction in the matter.

OTTAWA, January 7, 1926.

ORDER No. 37176

In the matter of the application of the Canadian Northern Saskatchewan Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic its Turtleford Southeasterly Branch from mileage 0, at the junction with the Turtleford Subdivision of the Canadian National Railways at mileage 56.2, for a distance of 23 miles; also the north leg of the wye at the said junction, a distance of 0.24 of a mile.

File No. 26653.10

THURSDAY, the 17th day of December, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

HON. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, granted leave to carry traffic over that portion of its Turtleford Southeasterly Branch from mileage 0, at the junction with the Turtleford Subdivision of the Canadian National Railways, at mileage 56.2, for a distance of 23 miles; also the north leg of the wye at the said junction, a distance of 0.24 of a mile, for a period of two months from the date of this order; the speed of trains operating over such line to be restricted to a rate not exceeding twelve miles an hour.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 37188

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for an Order rescinding the General Order of the Board, No. 425, dated the 13th November, 1925; or for a rehearing and suspension of the said General Order pending such rehearing.

File No. 33502

WEDNESDAY, the 23rd day of December, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application and what is alleged in support thereof and on behalf of the Canadian Pacific Railway Company, the Dominion Atlantic Railway Company, and Canadian Explosives, Limited,—

The Board orders: That the application be, and it is hereby, refused; and that the requirements of the said General Order No. 425 as to amendments to tariffs on high explosives be put into effect not later than the 8th day of January, 1926.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 37195

In the matter of the application of the Canadian International Paper Company and Guy Tombs Limited, of Montreal, Quebec, on behalf of various paper companies, for an Order suspending Supplement No. 2 to Canadian National Railways Tariff C.R.C. No. E-976; Supplement No. 2 to Canadian Pacific Railway Tariff C.R.C. No. E-4196; Supplement No. 2 to Quebec Central Railway Tariff C.R.C. No. 922; Supplement No. 2 to Quebec Central Railway Tariff C.R.C. No. 921, in so far as they propose, effective January 1, 1926, to change the rates on newsprint paper, in carloads, from various shipping points to Clarksville, Knoxville, Memphis, and Nashville, Tennessee.

File No. 24602.11

THURSDAY, the 31st day of December, A.D. 1925.

S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application,—

The Board orders: That Supplement No. 2 to Canadian National Railways Tariff C.R.C. No. E-976; Supplement No. 2 to Canadian Pacific Railway Tariff C.R.C. No. E-4196; Supplement No. 2 to Quebec Central Railway Tariff C.R.C. No. 922; Supplement No. 2 to Quebec Central Railway Tariff C.R.C. No. 921, in so far as they propose, effective January 1, 1926, to change the rates on newsprint paper, in carloads, from various shipping points to Clarksville, Knoxville, Memphis, and Nashville, Tennessee, be, and they are hereby, suspended pending a hearing by the Board.

S. J. McLEAN,

Assistant Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 22

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Application of the Montreal Board of Trade, Fort William Board of Trade, Port Arthur Chamber of Commerce, Canadian Pacific Railway Company et al, the Province of New Brunswick, the Province of Nova Scotia et al, to rescind Order No. 36769 of September 2nd, 1925, and for reconsideration of the case as part of the General Freight Rate Investigation.

File 30686.2

JUDGMENT

CHIEF COMMISSIONER McKEOWN CONCURRED WITH DEPUTY CHIEF COMMISSIONER VIEN.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I

In fixing September 29 as the date for hearing in the above matter, it was pointed out by the Chief Commissioner, as an argument in favor of this date, that the movement of grain westward at or about that time would still be light. To me, this was tantamount to saying that decision should and would be rendered at an early date.

When the hearing was thus arranged for, it was anticipated, by at least the majority of the Board, that the decision would be given very soon after the hearing.

In the opinion of the members of the Board, as I understood it, the issue was not considered to be a wide one. At the hearing, representations were made that it was urgent that decision should be rendered as expeditiously as possible. Counsel for the Province of British Columbia made representations to this effect, intimating that a prolonged period without decision would make for uncertainty.

Under date of October 16, I represented in writing to the Chief Commissioner that, in my opinion, the matter was urgent and that decision should be rendered forthwith, and stated that I was prepared, on notice, to at once submit my reasons for judgment.

Following this, I was asked by the Chief Commissioner to arrange for western sittings to take care of matters then outstanding. Under date of October 23, I sent a memorandum to the Chief Commissioner referring to the arrangements being made for these sittings. In this memorandum I stated that having in mind affording the parties a minimum notice of three weeks, I

was making my arrangements based on leaving November 10. Referring, then, to the Export Grain Rate Case, my memorandum continued:—

“What I have in mind is this: The matter was heard by the full Board and when decision is rendered the full Board should be here to consider same. I shall go on and make my arrangements for the Western trip on the basis I have outlined, assuming that decision in the Export Grain Rate Case will be available for consideration a reasonable time before November 10.”

Not being advised to the contrary, I made my arrangements accordingly.

Following October 23, various conferences took place. In the course of these discussions, the Deputy Chief Commissioner stated he desired to have time to prepare a judgment. In asking for time, he pointed out that he had been appointed a short time before the hearing and had not had an opportunity of familiarizing himself with the decisions which had been referred to in the course of the hearings. For the reasons advanced by him, the members of the Board acquiesced in this request.

The section of the Board which had held hearings in the West returned to Ottawa on November 28. In conference which took place on the afternoon of November 30, I referred to the question of the judgment which was to be prepared and enquired about its status. The Deputy Chief Commissioner, however, was unable to be present.

On December 2, the matter was again referred to by me, and the Deputy Chief Commissioner stated he was not quite ready to submit judgment, but that he would be able to go on shortly. On December 10, he submitted his reasons for judgment. The Chief Commissioner stated that he concurred in said reasons.

Subsequent to my memorandum of October 16, already referred to, I prepared, under date of October 19, the following Memorandum of Reasons for Judgment. See portion marked II.

II

The public hearing has been in the public interest, because it has enabled full discussion of the legal principles involved. The record of the hearing should be a safeguard against the recurrence of such an unprecedented course of action as was involved in the issuance of Order No. 36769 of September 2, 1925.

I have represented to the Chief Commissioner that, in my opinion, sufficient time has elapsed since the notes of hearing were received to permit of the consideration of these; and I have further expressed the opinion to him that the rendering of judgment is a matter which is urgent. Judgment should be rendered forthwith.

There is no question of the merits involved in the present application as heard. Reference, however, may be made to the fact that the Board rendered on October 9, 1923, a decision on the same subject matter as was involved in the Judgment of September 2, 1925, the latter judgment being in the names of the Chief Commissioner and Commissioner Oliver. The Judgment of October 9, 1923, was concurred in by the late Chief Commissioner Carvell, Assistant Chief Commissioner McLean, Deputy Chief Commissioner Nantel, and Commissioners Boyce and Lawrence; Commissioner Oliver dissenting.

That the disposition made in 1923 of the same subject matter by the majority of the Board should have been later overruled by a minority of the Board is of highly doubtful legality, and still more doubtful propriety.

It is not my purpose to analyze in detail the decision rendered by the Chief Commissioner of September 2, 1925. Reference is made only to a few points.

The Chief Commissioner recognizes in his judgment (*Board's Judgments and Orders*, Vol. XV, p. 272, at p. 275), that “the tolls now in force were con-

sidered by the Board just and fair." That is to say, the tolls operative when the hearing of November, 1924, took place had been found just and fair by the Board. What reason is given for the change now made? Is it new and material evidence submitted in the hearing of 1924? I cannot so read the Reasons for Judgments of the Chief Commissioner. Let the following be noted:—

" . . . having regard to the legislation and directions of the Orders in Council, I think it is incumbent upon us to give consideration to the subject in the light of parliamentary action since the above Judgment was pronounced." (*p. 276 of decision.*)

Reference is then made to the amendment of 1925 and the wider application of the grain and flour rates "moving for all points on all lines of railway west of Fort William, to Fort William or Port Arthur over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament." The contention is advanced, in this connection:—

"In the presence of this legislation giving rise, it is claimed, to conditions as against the western ports more onerous than have heretofore existed, it is, I think, the duty of the Board to give effect to provisions of the Railway Act calling for the removal of unjust discrimination, as well as to the instructions of the Order in Council, and to provide to all parts, whether East or West, an equality as far as the same may be within its power to do so." (*Ibid p. 276.*)

It has been recognized, over and over again, in the decisions of this and other regulative tribunals, that the measure of unjust discrimination or undue preference is to be found not in law but in the facts themselves. Whether unjust discrimination does or does not exist is a question of fact.

"It has been recognized by the Board since its establishment that the equality of tolls was required only where the circumstances and conditions were substantially similar."

Attorney-General for British Columbia vs. Can. Pac. Ry. Co., 8 Can. Ry. Cas., 346-350.

Reference may also be made to—

Spanish River Pulp & Paper Co. vs. C.P.R. Co. et al, 28 Can. Ry. Cas. 100, at pp. 109-112.

Empire Flour Mills vs. M.C.R.R. Co., 16 Can. Ry. Cas. 425.

Mathias vs. C.P., C.N., and G.T.R. Cos., 18 Can. Ry. Cas. 410.

London Board of Trade vs. Express Traffic Association 19 Can. Ry. Cas. 420.

The Interstate Commerce Commission has said—

"The Commission . . . can only determine upon the facts and conditions whether or not the rates in question are unreasonable or unjustly discriminatory."

Grand Junction Mining & Fuel Co. vs. Colorado Midland Rd. Co. et al, 16 I.C.C., 452, 456.

The decision of the Chief Commissioner, in this regard, is contrary to a long well-established line of precedents. His ruling, so far as his Reasons for judgment are concerned, is based not on evidence but on legal construction; and the legislation and Order in Council, upon the legal construction of which he relies for support, came into existence a considerable period of time after the hearing in Vancouver in November, 1924, and manifestly, even if they were material to the determination of what constitutes discrimination, could not have been relied on in the hearing in question in which the Chief Commissioner and Commissioner Oliver were hearing evidence.

In the decision of the Chief Commissioner occurs the following language (*Ibid* p. 277):—

“ . . . if, in order to deal with the railways in a just and reasonable way and to put them in possession of sufficient revenue to carry on business, having regard to all their obligations, it be shown that extraneous aid should be afforded, the decisive question will be whether such aid should be so provided or the business of the country be injured or retarded.”

Paraphrased, this means—if need be, in order to aid business, rates may be struck lower than cost; the difference between this figure and a reasonable return may be obtained from “extraneous aid.”

Presumably, the reference to “extraneous aid” means the addition of a few more footprints to the already well-travelled road leading to the Dominion Treasury.

Whether the statement contained in the Judgment is relied upon in support for the particular action taken, or whether it is laid down as a new principle of action is not clear. Whatever be the point of view, the power is not conferred by the Railway Act. Until Parliament speaks, its silence confers no power upon the Board.

Order in Council P.C. 886, of June 5, 1925, laid down instructions to the Board which were dealt with as follows in the Board's Resolution of September 2, 1925, (*Board's Judgments & Orders*, Vol. XV, No. 13, Sept. 15, 1925, pp. 271-272:—

“Whereas Order in Council P.C. 886, of June 5, 1925, directed the Board—

‘to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure which will under substantially similar circumstances and conditions be equal in its application to all territories and localities.’

“it being set out that this was—

‘so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion, and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other varied industries.’

“And whereas it is set out that—

‘due regard is to be given in particular to,—

‘(a) the claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

‘(b) the encouragement of the movement of traffic through Canadian ports;

‘(c) the increased traffic westward and eastward through Pacific Coast ports, owing to the expansion in trade with the Orient, and to the transportation of products through the Panama Canal.’

“And whereas the Order in Council has by its direction and by the wording contained in clause (c) above embodied as part of the investigation now before the Board the consideration of the bearing *inter alia* of traffic westward through Pacific Coast ports, thus, of necessity, involving the question of rates on export grain:

“Therefore, be it resolved by the Board that, in terms of the direction so given to it by Order in Council P.C. 886, the matter of export grain rates via Pacific Ports, and other matters, if any, pertinent to the investigation in which hearing may have been held but judgment not rendered, must of necessity be dealt with as part of the general investigation and under the judgment to be rendered in connection therewith.”

In publishing the Resolution, it was set out that it was proposed by the Assistant Chief Commissioner and adopted at a meeting of the Board in Ottawa on September 2, 1925; that the Resolution was supported by Commissioners Boyce and Lawrence, the Chief Commissioner and Commissioner Oliver dissenting; and the publication set out—

“Ordered: That the said Resolution be adopted by the Board, as read.”

At an earlier date, July 9, 1925, a Circular was issued by the Board dealing with the conduct of the case arising out of the instructions given by P.C. 886. A draft circular was presented by the Chief Commissioner, and the details of the same were discussed by the Board. In said Circular as issued (*Board's Judgments & Orders, Vol. XV, Aug. 1, 1925, pp. 251-253*) will be found at p. 253 the following words:

“Testimony now before the Board in cases already heard and in which no decision has been given is not to be repeated. New and material evidence in such cases may be submitted in the usual way.”

The draft as originally submitted contained the following words:—

“It is unnecessary to put in any evidence or to repeat any testimony previously submitted to the Board in cases already heard and now awaiting decision.”

In connection with the above provision, I may say that the British Columbia application *re* Export Grain Rates, heard in November, 1924, was referred to in the discussion of the draft circular in which the Chief Commissioner took part. In the discussion, reference was made to the possible desire of Counsel for British Columbia to submit additional evidence. Although the original draft safeguarded against it, reference was made to the possibility of there being a desire of submitting afresh in the Export Grain Rate Case the whole record.

The only case specifically mentioned in the discussion as heard but not yet decided was the Export Grain Rate Case. In view of the question raised, the Circular was amended, the words “new and material evidence” being suggested by me. The amendments made were concurred in by all present, including the Chief Commissioner who was present and took part in the discussion.

I am of opinion that, under section 38, the Order in Council P.C. 886 is of controlling effect, thereby leaving for the two Commissioners who participated in the judgment and order of September 2, 1925, no power to act. The Order in Council directs a general investigation. The subject-matter concerned of necessity falls within the general investigation. Order No. 36769, of September 2, 1925, should, therefore, be rescinded so that the matter may be dealt with as part of the said Investigation and under the Judgment to be rendered in connection therewith.

III

I do not propose to comment at length on the positions taken in the reasons for judgment of the Deputy Chief Commissioner. I have considered what is set forth; and, after careful consideration, I do not think I am justified in departing from the conclusions set out in my draft above referred to.

In his reasons for judgment, the Deputy Chief Commissioner, in dealing with the Circular notice of July 9, 1925, says—

“... I do not think it was entertained by any member of the Board that all cases in any way bearing upon the subject matters referred to in the Order in Council which had been already heard and in which the evidence had been definitely closed were necessarily to be immediately embodied in the general investigation”

And in the same connection he continues:—

“ . . . I see nothing in the language used in the notice which can be construed as a ruling of the Board determining that such cases were not to be dealt with as the members of the Board who sat in such individual cases should think proper”

I do not direct myself to the discussion of the general position as so set out; it is unnecessary so to do. I concern myself with the fact to which I have already referred, that the status of the British Columbia Case was specifically before the Board when the Circular was advanced. The Deputy Chief Commissioner, not having been a member of the Board when the Circular was being considered, has, of necessity, to deal with the matter as one of general inference. I speak with personal knowledge of what took place.

Without indulging in vain repetition, it may be emphasized that the matter was before the Board when the final form of the Circular was agreed upon. The Chief Commissioner was present and participated in the discussion and action. He agreed in the amendment. This amendment was adopted after there had been specific reference, in the discussion, to the British Columbia Case then outstanding. The circular did not, it is true, mention the British Columbia Case by name. It does not say in so many words that it was to be incorporated into the general investigation. But if the discussion I have summarized means anything, it means that those who participated in this discussion understood that without further definition it was so incorporated.

Reference is also made by the Deputy Chief Commissioner to the application of the *Canadian Explosives, Limited, of Montreal, Board's file No. 33502*. He points out that this was an application launched in 1924; and he argues the fact that this was not dealt with by way of rendering of judgment until after the notice of July 9 was issued justifies the interpretation he places on the Board's notice. To quote his conclusion:—

“It is difficult to conceive a more exact parallel to the case at issue than the one to which attention has been drawn. The hearings in both cases took place during the closing months of 1924. Both were concerned with freight rates. In both, the evidence was closed and the judgment was being awaited when the Order in Council P.C. 886 and the Board's notice of July 9 last were issued. If the passage of such Order and the issuance of the notice of the Board had the effect of impairing the Board's jurisdiction, their operation must have been equal in both cases.”

I am unable to see the parallelism relied upon. The broad issue dealt with in P.C. 886—an order which has a governing effect in connection with the Board's circular—is equalization. That is to say, the enforcement of the provisions of the Railway Act against unjust discrimination and undue preference. It is unnecessary to develop this; the wording of the Order in Council is shot through with it. The Chief Commissioner, in his judgment of September 2, emphasizes (see p. 276) the question of similar circumstances and conditions being fundamental. He says, referring to the order:—

“The objective which it has in view is ‘the establishment of a fair and reasonable rate structure which will under substantially similar circumstances and conditions be equal in its application to all persons and localities, etc.’”

This quotation indicates that differences in circumstances and conditions must be given weight, and that mere arithmetical equality, independent of substantial similarity of circumstances and conditions, is not the criterion. The *Explosives Case*, on the other hand, deals with the reasonableness of rates in themselves. I have heard no valid suggestion that the provisions of P.C. 886

preclude, or pretend to preclude, the exercise by the Board of its jurisdiction in regard to complaints arising that rates are unreasonable *per se*.

The Deputy Chief Commissioner summarizes his findings under headings:—

(1) "That the action to rescind or vary the order should be dismissed."

My position, for the reasons above given, is that Order No. 36769, of September 2, 1925, should be rescinded.

(2) "That inasmuch as many interests which were not represented before the Board when the case was heard have now been brought to our attention, further consideration of the whole matter should be had as part of the Freight Rate Enquiry."

My position is that the matter should be dealt with as part of the General Investigation and under the judgment to be rendered in connection therewith.

I hold—

(a) That Order No. 36769 should be rescinded;

(b) That thereafter the matter of Export Grain Rates westbound should be dealt with as part of the General Rate Investigation. In my opinion and for the reasons already given, this is the procedure which should be followed.

The Reasons of the Deputy Chief Commissioner are reasons for Upholding Order No. 36769. In the conclusions arrived at by the Deputy Chief Commissioner, it is recognized that this order was issued on a record partial and incomplete, for it is recited by him that "inasmuch as many interests which were not represented before the Board when the case was heard have now been brought to our attention" the matter should be considered as part of the General Freight Rate Inquiry. It is also to be noted that he does not contend that the record as against the railways on which the order was issued was complete, for he states there should be a further consideration of "the whole matter." That is to say, not only the matter as concerns the interests which were not represented before the Board but also the matter as regards the railways in so far as they were represented before the Board. That is to say, the incompleteness of the record justifies a further consideration of the whole matter.

The record on which Order No. 36769 issued is thus adjudged partial and incomplete. The Chief Commissioner concurs in this adjudication in respect of a hearing in which he presided and in connection with which Order No. 36769 subsequently issued.

While the record on which Order No. 36769 issued is thus adjudged incomplete, at the same time it is held that the order which issued on a record, partial and incomplete, should be continued, and that whatever redress, if any, may develop as the result of further hearing should date as and from a date in the future yet unknown, the rates as fixed under the order running in the meantime.

If my position as to rescission is not upheld, then I still desire that the parties be heard in the General Investigation, and the matter be dealt with under the judgment to be rendered; that is to say, the parties shall at least have that further consideration of the whole matter as part of the General Freight Rate Enquiry which is recommended in the second of the summarized conclusions of the Deputy Chief Commissioner.

(3) "That if the railways so desire, they may be at liberty at any time, on proper notice, to move the Board to vary, or rescind, or modify the Order, upon the ground that it is unduly burdensome to them, or for any other reasons which they may desire to put forward."

Because of the nature of what is involved, and its ramifications, I do not see how the matter can be advantageously dealt with other than as part of the General Investigation. I do not interpose any objections to action being taken

as suggested; but for the reason set out in the preceding sentence, I do not think that abstaining from so acting creates any presumption.

"That pending the final disposition of all the matters involved, the existing rates should continue in force until such time as the Board, as the result of further investigation, orders otherwise."

My position being that Order No. 36769 should be rescinded, it follows therefrom that the rates provided for therein should also be rescinded.

December 17, 1925.

THOMAS VIEN, *K.C.*, the *Deputy Chief Commissioner*:

This is an application on the part of the Montreal Board of Trade, acting on behalf of the Montreal Corn Exchange, to rescind Order No. 36769 of the 2nd of September, 1925, regarding the tariff on westbound grain and flour for export, and for a reconsideration of the case as part of the general Rate Investigation.

It is supported by the provinces of Nova Scotia and New Brunswick, by various cities and towns, by the Canadian Pacific Railway Company, by numerous Boards of Trade and other bodies;

It is opposed by the provinces of Saskatchewan, Alberta and British Columbia.

The details concerning the hearing of the case and its disposition are contained in the reasons for judgment preceding the order which is challenged.

The application upon which the order was issued, (file No. 30686.2) on August 2, 1924, was made on behalf of the government of British Columbia, by the Honourable John Oliver, Prime Minister.

Order No. 36769 dealt only with that part of the application which demanded: "an order reducing the rates of grain moving westward for export, to the same rates, proportioned to the distance, as the same grain would carry if moving eastward for export."

On the 14th of October, 1924, the case was set down for hearing at Victoria, British Columbia, on Tuesday, the 4th of November, 1924, at 10 a.m., and a notice to that effect was sent by the Assistant Secretary on October 23 to the following interested parties:—

Honourable John Oliver, Prime Minister, B.C.

G. G. McGeer, Esq., K.C., Vancouver.

E. P. Flintoft, Esq., Solicitor for C.P.R., Montreal.

G. C. Ransom, Esq., Chairman, Canadian Freight Association, Eastern Lines, Montreal.

F. W. Thompson, Esq., Chairman, Canadian Freight Association, Western Lines, Winnipeg.

Later, at the request of the applicant, the case was transferred from Victoria to Vancouver, on Wednesday, the 5th of November, 1924.

The sittings of the Commission were presided by the Chief Commissioner, assisted by Mr. Commissioner Oliver, forming a quorum. There appeared before them:

The Government of the province of British Columbia, represented by Mr. G. G. McGeer.

The Government of the province of Alberta, represented by MM. Mother-sell and Chard.

The City of Vancouver, represented by Mr. McCrossan.

The Canadian Pacific Railway, represented by MM. Lannigan and Stephen.

The Canadian National Railways, represented by MM. Manders and Hatley (Assistant General Freight Agent).

The hearing was continued from day to day, to November the 6, 7, 11, 12 and 13.

At the conclusion of the hearing, the railway companies requested the privilege of filing a written argument, and the request was granted, the companies having until the 1st of December to send in their facts.

The case was then taken under advisement, and was dealt with on the 2nd of September, 1925, by Order No. 36769 issued by the two Commissioners who sat at the hearing.

In the meantime, Order in Council P.C. 886, dated June 5, 1925, issued under the provisions of section 38 of the Railway Act, had directed the Board to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of parliament, with a view to the establishment of a fair and reasonable rate structure which would, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion, and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries.

On the 27th of June, 1925, chapter 52 of 15-16 George V was assented to, further defining the powers of the Board to fix rates and to enforce a fair and reasonable rate structure.

In compliance with the instructions contained in Order in Council P.C. 886, the Board issued on the 9th of July, 1925, a notice to all concerned, requesting the public:—

- (a) To submit to the Board any statement of facts under which it is claimed that unjust discrimination, or undue preference, or unfair treatment exists in connection with the rates of freight charged upon any commodities; or in the treatment of any person, city or province by any railway company;
- (b) To set forth the grounds upon which it is claimed on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;
- (c) To make submission as to the encouragement of the movement of traffic through Canadian seaports.

The notice, among other things, said: "Testimony now before the Board in cases already heard and in which no decision has been given is not to be repeated. New and Material evidence in such cases may be submitted in the usual way."

On the 2nd of September, a resolution, proposed by the Assistant Chief Commissioner was passed by the Board. (Judgments, Orders, etc., Vol. XV, p. 271) providing in part as follows:—

"Be it resolved by the Board that, in terms of direction so given to it by Order in Council No. P.C. 886, the matter of export grain rates via Pacific ports, and other matters, if any, pertinent to the investigation in which hearing may have been held but judgment not rendered, must of necessity be dealt with as part of the general investigation, and under the judgment to be rendered in connection therewith.

"The resolution was supported by Commissioners Boyce and Lawrence. The Chief Commissioner and Mr. Commissioner Oliver dissenting thereto.

"*Ordered*: That the said resolution be adopted by the Board, as read."

On the same day, September the 2nd, 1925, Order No. 36769 issued, ordering that the Canadian Pacific Railway and the Canadian National Railway com-

panies file tariffs, effective not later than the 15th day of September, 1925, reducing the rates on grain and flour to pacific ports within Canada, for export, to the same rates, proportioned to distance, as such grain and flour would carry if moving eastward for export.

Application is now made under Section 51 of the Railway Act to rescind Order No. 36769, because:

I. The said Order 36769 is *ultra vires*, and a nullity;

II. If it is not an absolute nullity, it is voidable, and should be set aside, because:

- (a) There was no power in the two Commissioners or even in the full Board to render such a judgment after the Order in Council P.C. 886;
- (b) After the notice issued on the 9th of July, the Board could not but suspend individual enquiries; and as a matter of justice, therefore, Order No. 36769 should be set aside, it having been rendered without giving a chance to the interested parties to be heard, although they had been notified that they would be heard;
- (c) By its resolution of the 2nd of September, the full Board had decided that the matter of export grain rates via Pacific ports, and other matters, if any, pertinent to the investigations in which hearing may have been held, but judgment not rendered, would be dealt with as part of the general investigation.

III. As a matter of expediency, it should be set aside.

Counsel supporting the order submitted that section 51 of the Railway Act excludes immediate application for review or appeal in matters properly cognizable by the Governor in Council, if the expediency of the order be attacked; or by the Supreme Court, if a matter of law or jurisdiction be involved.

In the latter case, no doubt, ultimate disposition can only be made by the Supreme Court; but, even although an appeal to the Governor in Council might seem a more logical move in questioning the expediency of an order such as this, yet, I am of the opinion that, under section 51, an application can be made to the Board to review, rescind, change, alter or vary any of its Order or decisions.

It is therefore necessary to examine the grounds upon which the Order is attacked; I desire, however, to state at once, that all the members of this Board fully realized the desirability of giving a decision upon this application as expeditiously as possible, and my colleagues were quite ready to do so a few weeks after the hearing of the 29th of September last. I was unfortunately unable to complete my preparation in such a short time.

I was appointed to this Board on the 5th of September last, and sat for the first time on the 29th of the same month.

Eminent Counsel appeared on behalf of all the interested parties, and argued for three days before the Board, and their arguments comprise two volumes of the Record of the Board.

They quoted in support of their arguments evidence adduced before this Board as early as 1909 and since, and referred the Board to the decisions rendered in the Western Rates Case, the Eastern Rates Case, and the Equalization Rates Case of 1914, 1916 and 1922 respectively, and several Orders in Council.

My colleagues who had had the advantage of sitting at former hearings on similar applications, realized that I could not be expected to possess the familiarity with railway problems that they had acquired by their long years of experience on this Board, and with their usual spirit of fairness and justice, they agreed at my request, not unduly to press me to deliver a hasty judgment, in view of the importance of the matter involved.

Let us now consider the reasons advanced for the rescission of Order No. 36769.

I

HAD THE TWO COMMISSIONERS JURISDICTION

The first point made is that there was no power in the two commissioners to issue this Order.

The jurisdiction of the Board is determined by the Railway Act. Under section 325 of the said Act, the Board has power to fix rates, to enforce fair and reasonable rate structure, and to alter rates as changing conditions may require.

Under section 33, par. 1, the Board has full power to inquire into, hear and determine any application made under the Act.

Section 12 of the Act, provides that two Commissioners shall form a quorum. Section 20 provides that the Board may make rules and provisions respecting: (c) the apportionment of the work of the Board among its members, and the assignment of members to sit at hearings, and to preside thereat, and in the absence of other rule or provision as to any such matter, such matter shall be in the charge and control of the Chief Commissioner.

It is customary for the Board to hold sittings in Western Canada twice a year. Two or three members are assigned to preside thereat by the Board or by the Chief Commissioner, as provided by section 20.

The application of the Government of British Columbia was received on August 2nd, 1924. At the request of the Assistant Chief Commissioner, on the 14th of October, 1924, it was listed for hearing in B.C., and notice of sittings was despatched in the ordinary manner on the 23rd of October, 1924.

A trip to the West was arranged for the fall of 1924, and the Chief Commissioner and Mr. Commissioner Oliver were regularly assigned to preside at the sittings to be held during that trip.

The two of them formed a quorum, and as such could exercise all the jurisdiction vested in the Board by the Railway Act.

"A quorum is such a number of members of a body as is competent to transact business in the absence of other members. *Stave v. Trustees of Wilkesville Tp.*, 20 Ohio St. 388.293. (Words and Phrases defined, vol. 7, page 5895.)

"In determining how many judges shall constitute a court, or a quorum of a court, no distinction can be drawn between the words 'quorum' and 'court'. Each term implies a body capable of exercising the function of a whole body not otherwise reserved. Therefore the rule that in the House of Lords, the Supreme Court of England, a small minority may sit in deciding appeals, is applicable to show the propriety of the statutory provision that a minority of the Supreme Court Judges may constitute a quorum of such court for the transaction of certain business. *Floyd v. Quinn*, 52, Atl. 880, 882, 886, 24 R. I. 147. (*Ibidem*).

"The quorum of a body may be defined to be that number of the body which, when assembled in their proper places, will enable them to transact their proper business, or, in other words, that number that make the lawful body, and gives them power to pass law or ordinance. *Heiskell v. City of Baltimore*, 4 Atl. 116, 119, 65 No. 125, 57 Am. Rep. 308. (*Ibidem*)."

Indeed, after assuming jurisdiction in any individual case, after sitting, hearing the evidence and argument, and taking the case under advisement, in ordinary circumstances, the Board, as constituted has the power and the duty of giving a decision. (Section 33, par. 1.)

It was urged during the argument, that the course pursued in this case was different from that followed in all other instances. At page 1602 of the record I read:—

"By the DEPUTY CHIEF COMMISSIONER: Suppose there had been no Order in Council or no legislation passed, the two Commissioners who formed a quorum of the Board, would have gone to Vancouver, would have heard the evidence, received the arguments and then would have taken the matter under advisement and then would have delivered judgment.

"Mr. LAFLEUR: I think not.

"Mr. FLINTOFT: Not in accordance with the practice. There is no precedent of that sort."

I do not think that it was ever contended before that two members of the Board may not, under the provisions of the Act, dispose of a case properly brought before them.

Upon enquiry, I have found scores of instances in which applications have been heard and decided by two Commissioners. Let me quote among others the following:—

File No. 32658 reveals an application of the Retail Merchants of Canada *re* rates on fruits and vegetables. It was heard at Calgary, July 10th, 1923, by the Assistant Chief Commissioner and Mr. Commissioner Boyce, who reserved judgment until September 29, 1923, and pursuant to such judgment on October 5th, 1923, Order No. 34281 was issued, signed by the Assistant Chief Commissioner and Mr. Commissioner Boyce.

File No. 25705.9 reveals an application from the Great West Sand & Gravel Company *re* special rates on gravel. It was heard at Winnipeg on October 2nd, 1922, before the then Chief Commissioner Carvell and Mr. Commissioner Lawrence, who made Order No. 33355 on 1st February, 1923, dealing with the matter.

File No. 25384.4 reveals a complaint from the Canada Cement Company against increase in rates on cement and stone dust. The matter was heard in November, 1924, by the Assistant Chief Commissioner and Mr. Commissioner Boyce, who joined in Order No. 36169, dated March 14th, 1925, disposing of the matter.

File No. 24602.8 reveals an application from the Spanish River Pulp & Paper Mills, Limited, *re* rates on paper to Toronto. It was heard at Sault Ste Marie on 27th July, 1922, before the Assistant Chief Commissioner and Mr. Commissioner Boyce, and disposed of by them by Order No. 33344, dated 31st January, 1923.

File No. 32944 reveals an application from the Canada Cement Company for an adjustment of rates on gypsum. The matter was heard in Ottawa, November 20th, 1923, before the Assistant Chief Commissioner and Mr. Commissioner Boyce, who delivered judgment, following which Order No. 24802 was issued signed by the Assistant Chief Commissioner and Mr. Commissioner Boyce.

File No. 31214.19 reveals an application of the Minnesota and Ontario Paper Company *re* freight rates on newsprint. It was heard at Winnipeg on October 22nd, 1922, before the then Chief Commissioner Carvell and Mr. Commissioner Lawrence, who gave decision on 7th February, and Order No. 33407 was issued signed by the late Chief Commissioner and Mr. Commissioner Lawrence.

I have found a few instances in which two Commissioners unable to agree, referred the matter to the Chief Commissioner with their submissions. But I have been unable to find one precedent of two commissioners who having heard a case, and agreeing in their findings, refrained from giving judgment.

Had the two Commissioners given judgment in the early part of 1925, their jurisdiction would never have been challenged.

Let us now examine if the Board, as constituted, and forsooth, as it was urged, (Mr. Lafleur, page 1573) the full Board, were estopped from proceeding

to make decision upon any rate case then pending for judgment, because of the effect of the Order in Council, the notice to the public of the 9th of July, or the resolution of the 2nd of September.

II

(a) THE ORDER IN COUNCIL P.C. 886

It is contended that Order in Council P.C. 886 having issued, it was the duty of the Board to desist from altering or modifying rates in any particular locality. (p. 1576).

In whatever language this may be clothed it must come down to the contention that such Order in Council ousted the jurisdiction of the Board, as regards an application already heard, in a rate case concerning which the record had been closed and judgment was being awaited.

Under section 38 of the Act, the Governor in Council may at any time refer to the Board for report or any other action any question arising under any act of Parliament, and the Board must without delay comply with the requirements of such reference.

It is urged, and rightly, I believe, that this imposes upon the Board the duty of complying with the directions contained in the reference.

What were the directions of Order in Council P.C. 886? They are contained in the following paragraph:—

“The Committee therefore advise that the Board be directed to make a thorough investigation of the rate structures of railways and Railway Companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various Provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and in particular to:—

“(a) The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

“(b) The encouragement of the movement of traffic through Canadian ports;

“(c) The increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal.”

“The Committee further advise that legislation be introduced at the present Session of Parliament, making it clear that the provisions of the Railway Act of 1919 in respect of tariffs and tolls shall, save in the particular above mentioned, be operative notwithstanding any special Acts or Agreements and removing all doubts as to the validity of tariffs heretofore filed.”

I am unable to find in these words any particular direction to the Board to cease to exercise the powers that are vested in it by Section 33 of the Act, namely to inquire into, hear and determine any application by and on behalf of any party interested complaining, as in this case, that railway companies are violating the provisions of the Railway Act by charging tolls unjustly discriminatory.

To my mind, on the contrary, the last paragraph of the Order in Council provides that legislation will be introduced to make it clear that the provisions

of the Railway Act 1919, in respect of tariffs and tolls, shall be operative, notwithstanding any general or special acts or agreements.

Section 314 (par. 4) of the Railway Act, 1919, provides that no toll shall be charged which unjustly discriminates between different localities.

The same section (par. 5) provides that the Board shall not allow any such toll.

Under section 323 (par. 3) all tariffs and tolls must be submitted to and approved by the Board.

Under section 325, the Board may disallow any such tariffs and tolls.

By the very legislation announced by Order-in-Council P.C. 886, (15-16 Geo. V, ch. 52, s. 3) it is provided that the powers given to the Board under the Act to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada, or by any agreement, made or entered into pursuant thereto, whether general in application or special, or relating to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination.

Is it possible to use more emphatic language to reaffirm all the powers vested in the Board by the Railway Act?

Thorough and complete investigations of the whole subject of railway freight rates in the Dominion always take a great deal of time.

In the Western Rates Case, (file No. 18755) the application was dated October 8th, 1909; the evidence and final argument was closed on the 13th of February, 1912; it was reopened on the 15th of February 1912, and closed on the 13th of December 1913; judgment was delivered April 6th 1914. We sincerely hope that the general rate enquiry ordered by P.C. 886, and already well underway, will not take as much time. But several months, and perhaps over a year must of necessity elapse before it is concluded.

In the absence of clear and peremptory language to that effect, would it not be unreasonable to construe the Order-in-Council as directing that in the meantime the Board shall cease to function in all rate cases? On the contrary, we find in the very terms of the Order-in-Council, and of the legislation that it had announced, a reaffirmation of all the powers of the Board under the Act. The Order-in-Council simply imposes on the Board an additional duty, that of making a thorough investigation of the rate structure of railways. Moreover, I do not believe that the Governor in Council could, even if they attempted to, which I submit is not the case here, limit by Order-in-Council the jurisdiction vested in the Board by Statute.

This was the view adopted by the two Commissioners who delivered judgment on the 2nd of September, 1925, and I agree with them on that point.

It will be noted that the disposition of this matter as made by the Board's Order, does not preclude its further investigation in the manner outlined in the Order-in-Council. If such were the effect of the Order of the Board, a degree of hesitation might be experienced in arriving at the conclusion above expressed. But when it is remembered that, notwithstanding the present finding of the Board, and the Order thereunder, the whole matter can and will be further investigated in accordance with, and under the terms of the Order-in-Council, it is obvious, I think, that the directions of the Order-in-Council can properly be carried out, without ousting the Board of its ordinary and peremptorily reaffirmed jurisdiction.

(b) THE NOTICE OF THE 9TH OF JULY, 1925.

It was insistently urged at the hearing that by virtue of a notice issued by the Board under date of 9th July, 1925, the Board was estopped from proceeding

to make decision upon any case then pending for judgment, because of the effect of the Order-in-Council as well as the notice by which the public had been invited to express its views upon all matters connected with the inquiry. I do not think this was the view entertained by the Board at the time this notice was issued. Rather was it for the guidance of the public in an investigation which admittedly had not been entered upon. Its whole tenor shows that the instructions were issued and suggestions were made with reference to the general freight rate investigation not then begun. It is recognized by the Board that there will be instances demanding such investigation in which new and material evidence in cases pending may be called for, or desired to be given, and in such cases no objection to that procedure will be made, and neither will it be necessary in such cases to repeat evidence already given. But nowhere was the idea expressed, and I do not think it was entertained by any member of the Board, that all cases in any way bearing upon the subject matters referred to in the Order-in-Council, which had been already heard and in which the evidence had been definitely closed, were necessarily to be immediately embodied in the general investigation, and I see nothing in the language used in the notice which can be construed as a ruling of the Board determining that such cases were not to be dealt with as the members who sat in such individual cases should think proper.

Not in the present instance alone, has such course been followed, but identically the same action was taken with reference to the application set out in File No. 33502, which deals with a request for reduced rates on high explosives between Canadian points, contained in an application duly made to the Board by Mr. F. T. Parker, Director of Traffic Division of the Canadian Explosives Limited, which application was dated 9th July, 1924, and a copy of which was sent to Mr. G. C. Ransom, Chairman of the Canadian Freight Association, and was concerned entirely with rates.

Mr. Ransom filed his answer making claim that the rates on high Explosives did not unjustly discriminate against the complainant, nor restrict the manufacture and sale of these articles in Canada.

On the 16th of December, 1924, the case was heard in Ottawa before the Chief Commissioner, the Assistant Chief Commissioner and Mr. Commissioner Boyce, and at the hearing Mr. Ransom appeared for the Canadian Freight Association and Mr. Lannigan for the Canadian Pacific Railway Company in opposition to the application, and Mr. F. T. Parker in support thereof. On August 5th, 1925, the applicants made inquiry as to the disposition of the case, and in their letter to the Secretary of the Board they say:—

“It has occurred to me that the Board may be reserving its decision on this case and including our application in their proposed examination of the freight rate structure generally. Will you be good enough to advise me if this is the case? I am strongly of the opinion that our application should be considered without reference to this larger question and would, therefore, much prefer, if consistent, that decision be given before the Board conducts their general inquiry.

“This letter is written in view of the fact that the Board has expressed its desire to hear from the shippers in regard to the proposed realignment of Canadian freight rates.”

It is very evident that the applicants had received a copy of the Board's notice of July 9th above referred to, and were in some doubt as to whether their application which had already been heard as above noted would necessarily be drawn into the general inquiry, for their letter of inquiry was written a month after the notice of July 9th. Upon receipt of such letter, the Secretary referred the matter to the Assistant Chief Commissioner, one of the Commissioners who had heard the case and received the following instructions which are on the file—

"Write applicant that in accordance with his request this matter will not be reserved to be dealt with on the general inquiry, but will be dealt with on the record now before the Board". "Aug. 8, 1925".

The Secretary wrote accordingly.

From all this, it is very apparent that the prevailing opinion of the Board was not that all freight rate matters concerning which the evidence had been closed were necessarily drawn into the general rate inquiry, for in the above matter applicants were advised that their matter would be dealt with in the same way that the two Commissioners who sat have dealt with the present case, and judgment therein has now been rendered. (General Order No. 425.)

It is difficult to conceive a more exact parallel to the case at issue than the one to which attention has been drawn. The hearings in both cases took place during the closing months of 1924. Both were concerned with freight rates. In both the evidence was closed and judgment was being awaited, when the Order-in-Council P.C. 886, and the Board's notice of July 9th last were issued. If the passage of such Order, and the issuance of the notice by the Board, had the effect of impairing the Board's jurisdiction, their operation must have been equal in both cases.

I shall now deal with the question of justice, raised and linked up during the argument, with the notice of the 9th of July.

It was urged (p. 1585) that the judgment should be set aside because it is a decision rendered without the applicants having a chance to be heard, although they were notified that they would be heard.

It is quite clear that the notice of the 9th of July referred only to the General inquiry ordered by P.C. 886 and had nothing to do with individual cases, and much less with *pending cases under advisement*. I am unable to agree with the suggestion that it was a rule of procedure laying down that all individual inquiries would be suspended.

Nor can I see how the judgment appealed from deprives the applicant or any interested party of their day in Court, or prevents them from submitting what it is in their interest to submit in order to guide the Board in its decision.

It is admitted (page 1602) that the Board of Trade of Montreal was not entitled to a notice of the hearing at Vancouver, on the application of the British Columbia government. As a matter of fact, they never complained of not having received such notice. It seems therefore, that the determination of a case in which they were not a party, cannot be said to be an injustice to them.

I cannot accept the suggestion (p. 1729) that, by the notice of the 9th of July, the applicants were made a party to the British Columbia complaint. It is impossible reasonably to construe the notice as having that effect. The only paragraph invoked in that regard is the following:—

"Testimony now before the Board in cases already heard and in which no decision has been given is not to be repeated. New and material evidence in such cases may be submitted in the usual way."

I find in this purely a notice to those who had submitted evidence in cases already heard that they need not repeat it for the purpose of the general inquiry. The rules of procedure in all courts of Justice exact something more formal than that to make of an extraneous person a party to a case.

As suggested (p. 1719) under British law, it needs no special provision to say that the parties shall be heard, and the applicants will be heard in the general rate investigation in which they are parties, under the notice of the 9th of July already duly served upon them, and in which no sitting has been held, as yet.

It does not follow that they were entitled to be heard in the present case, wherein they were not a party, and wherein they had never intervened before judgment.

(c) THE RESOLUTION OF THE 2ND OF SEPTEMBER, 1925

It was submitted (p. 1600) that the administration of justice would be impossible if a minority of the members of a Court could, on hearing a decision rendered by the majority, retire and deliver judgment contrary to that of the majority.

This hypothesis, quite different from the actual facts, explains the misconception under which laboured, not only eminent Counsel, but so many people in this country, as regards this case.

Section 12 of the Act, which, it is admitted (p. 1705) is excellent and has been of the greatest possible value, provides that two Commissioners shall form a quorum.

I have established supra that, as regards a Court of Justice, no distinction can be drawn between the words "quorum" and "court."

Section 20 (c) provides for the assignment of members to sit at hearings. It is not denied, indeed it is admitted (p. 1593), that the Chief Commissioner and Mr. Commissioner Oliver, were duly assigned to sit on the application of British Columbia, and that they sat properly and regularly.

This being so, for the purpose of the case which they heard and took under advisement, I hold that they were the Board, as much as four honourable justices of the Court of King's Bench, forming a quorum (R.S.P.Q. 3062), are for the time being *the Court*.

It never occurred to me, in my twenty years of practice at the Bar of my province, that four justices of the Court of King's Bench, forming a quorum thereof, having heard a case and taken it under advisement, could be estopped from delivering judgment by any justice of the same court, who had not sat at the hearing.

If the four justices who sat were evenly divided, the appeal would fail at the will of the two justices who resisted it, and, yet they are a minority, the Court being ordinarily composed of five members. A justice who had not sat, would never dream of siding with any two justices, thereby forming a majority, either to render judgment or to prevent judgment being rendered.

Neither do I believe that a single precedent can be found in the history of this Board of a similar occurrence.

I hold that when properly possessed of the jurisdiction to sit and to hear a case at law, two Commissioners cannot be ousted, and prevented from delivering judgment. Otherwise, that "excellent section 12" would be meaningless, and the powers granted by it futile and illusory. If they form a quorum, that necessarily entails the power of discharging the duties of the Court, the principle of which is that of delivering judgment.

It was further suggested (p. 1706) that the usefulness of section 12 would be destroyed if it were to be used so that less than a majority of the Board can pronounce a judgment with which the majority does not agree.

I think that no such fear can reasonably be entertained in view of the fact that the Railway Act provides against such occurrence. Under Section 20, (c), the Board can make provisions respecting the assignment of members to sit at hearings.

The remedy does not lie in trying to estop the members properly assigned from discharging their full duty, but in assigning the six Commissioners to sit at certain hearings.

Under section 51, the Board may also review, rescind, change, alter, or vary any Order or decision made by it; and under section 36, it may do so upon its own motion.

If the judgment of two Commissioners does not commend itself to the majority of the Board, it can therefore be reversed upon an application to the full Board, such as the present one, or indeed upon the Board's own motion.

But even if the full Board had had the right to prevent the judgment being rendered, did they formally do so.

Let us examine the resolution itself:—

WHEREAS Order in Council P.C. 886, of June 5, 1925, directed the Board,—

“to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure which will under substantially similar circumstances and conditions be equal in its application to all territories and localities”.

“it being set out that this was—

“so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion, and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other varied industries”.

“And whereas it is set out that—

“due regard is to be given in particular to—

“(a) the claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

“(b) the encouragement of the movement of traffic through Canadian ports;

“(c) the increased traffic westward and eastward through Pacific Coast Ports, owing to the expansion in trade with the Orient and to the transportation of products through the Panama Canal”.

“And whereas the Order-in-Council has by its direction and by the wording contained in clause (c) above embodied as part of the investigation now before the Board the consideration of the bearing inter alia of traffic westward through Pacific Coast ports, thus, of necessity, involving the question of rates on export grain;

“Therefore be it resolved by the Board that, in terms of the direction so given to it by Order-in-Council P.C. 886 the matter of export grain rates via Pacific ports, and other matters, if any, pertinent to the investigation in which hearing may have been held but judgment not rendered, must of necessity be dealt with as part of the general investigation and under the judgment to be rendered in connection therewith.

“The resolution was supported by Commissioners Boyce and Lawrence. The Chief Commissioner and Mr. Commissioner Oliver dissenting thereto.

“*Ordered:* That the said resolution be adopted by the Board, as read”.

I express no opinion regarding the contention of Mr. Woods, K.C., Counsel for the provinces of Alberta and Saskatchewan, to the effect that the apparent intention of the above resolution is not carried into effect inasmuch as no specific order is embodied in it.

I read this resolution as intimating that the matter of export grain rates via Pacific Ports, etc., will be dealt with as part of the general investigation, and will be covered by the judgment to be rendered in connection therewith.

I do not find in it any formal direction to the two Commissioners who had the matter under advisement not to deliver an interim judgment as provided by section 45 (2) which reads as follows:—

"The Board may, instead of making an Order final in the first instance, make an interim order, and reserve further directions either for an adjourned hearing of the matter, or for further application."

It is neither contended that this matter has been finally disposed of by Order No. 36769, nor that such order precludes the Board from further investigating this matter in the manner outlined in their resolution, as part of the general investigation. In the judgment itself it is clearly stated, (p. 271) that the general rate inquiry is not to be embarrassed by the disposal of this particular subject.

In so far as the resolution of the 2nd of September has the meaning that I read in it, i.e. of dealing with the conduct of the general investigation then not yet begun, it is operative; but if it were to be read as having the meaning of ousting of their jurisdiction the two Commissioners who were "The Board", as regards the matter under advisement before them, I hold that it would be quite inoperative.

The same applies to the notice of the 9th of July, 1925.

For all these reasons, I am unable to accept the suggestion that at law, Order No. 36769 is a nullity, or voidable as being ultra vires, either on account of the Order in Council P.C. 886, the notice of the 9th of July, or the resolution of the 2nd of September.

I cannot see that it has wrought any injustice, or deprived anyone of its day in Court, and of the opportunity of being heard.

Let us now examine whether, as a matter of expediency, the Order should be set aside.

III

THE QUESTION OF EXPEDIENCY

On the 6th of April 1914, in his opening remarks on the Western rates case, the then Chief Commissioner used the following language: "The issues in this case involving so much have so often been confused, the hearings so protracted, and the evidence so conflicting, and the subject of freight rates in the Northwest has been a matter of consideration and comment for so many years, that an extended reference to the manner in which this investigation was commenced, and its scope, is advisable."

The same could be said of the present application, with an even greater degree of accuracy.

Fully to appreciate what is involved, it is necessary at the outset, to summarize the history of previous applications and judgments of the Board relating thereto.

The Railway development in the United States, both East and West, preceded that in Canada. As the conditions were very similar in both countries, the Canadian rates followed the lead given us by our neighbours to the South. In the United States, generally speaking, there always have been three or more sets of rates. In the East owing to a greater density of population and traffic, the rates were lower.

On the Pacific Coast and through the mountains, with a lower density of population and traffic, the rates were higher. An additional reason was the higher cost of construction and operation.

The same custom was followed in Canada.

When the Canadian Pacific Railway Company built through to the Coast, rates were built, generally, on three different basis:

1. The Eastern rates from the Head of the Lakes to the Atlantic Ocean;
2. The Prairie rates from Fort William to the Rocky Mountains;

3. The so-called, Mountain rates through to the Pacific Coast; and in the early days, both Prairie and Mountain rates were much higher in proportion to the Eastern rates than they are at the present time.

The first material change in this condition of affairs was the so-called, Crow's Nest Agreement of 1897, which, we are all aware, materially reduced the rates on grain and flour going East, and on various commodities therein mentioned going West; but this did not affect the general rate structure, and while there was some modification downward, as a result of the Manitoba Agreement, in 1903, yet the first general reduction of the Prairie and Mountain scales, as compared with the Eastern scale, was by the decision in the Western Rates Case, in 1914, when the spread was very materially lessened. Things remained practically the same until 1916, when by the decision in the Eastern Rates Case, so-called, an increase was made, generally, in the rates East of Fort William, but not in the West, which had the effect of again lessening the spread between the two.

In March, 1918, by General Order of this Board, No. 212, known as the Fifteen Per Cent Rate Increase, rates all over Canada were increased, generally, by fifteen per cent, and ten per cent in Mountain territory, although in some cases where the increase brought the rates on Crow's Nest commodities above that basis, the full fifteen per cent increase was not effective on certain commodities in Western Canada.

By Order in Council, P.C. 1863, in August, 1918, practically all rates in Canada were increased by twenty-five per cent; but in figuring out the rates, the fifteen per cent advance of March was disregarded West of Fort William, which meant that East of Fort William the two increases of March and August, put together, made forty per cent in Eastern Canada and only twenty-five per cent in Western Canada. This again very materially reduced the spread between the different sections.

The next change was by General Order of the Board No. 308, in September, 1920, known as the Forty Per cent Rate Increase, when all rates in Canada were increased by forty per cent, from Fort William, East, and by thirty-five per cent from Fort William, West. This, again, lessened the spread by five per cent. This continued until the 1st day of January, 1921, when five per cent was taken off the rates all over Canada; and, again, on the 1st of December, 1921, all rates were reduced by ten per cent, but this did not affect the spread between Eastern rates and Central or Pacific rates.

The representatives of Government and business organizations, both in Central and Pacific territories, contended that discrimination existed against them as compared with Eastern Canada.

Shortly after the promulgation of General Order No. 308 of this Board, being the order providing for the general rate increases known as the Thirty-five and Forty Per Cent Case, effective September 13, 1920, various bodies, among them the province of Manitoba, appealed to the Privy Council asking that the said order be rescinded for various reasons set forth by the appellants. The matter was heard by the Privy Council, and, on the 6th day of October, 1920, by P.C. No. 2434, His Excellency in Council dismissed the appeal, but, in doing so, stated the following:—

“What constitutes a fair and reasonable rate should now be arrived at without reference to the requirements of the Canadian National System, and your committee recommends that the order in this case be referred back to the Board to be corrected in its findings in such manner as to determine what are fair and reasonable rates, without taking into account at all for the time the order shall be in effect, the requirements of the Canadian National System.

“Very strong representations were made at the argument on appeal to the effect that the order continued and indeed intensified an unjust

discrimination in rates, it being claimed that higher freight rates prevail generally in Western Canada, that is west of Fort William, than prevail in Eastern Canada, that is east of Fort William. It was strongly urged that the reasons whatever they may have been, for this differential no longer exist, and that as a matter of public policy the principle of equalization of rates East and West should now be recognized. On the other hand, it was urged that the competition arising out of lake and river transportation as well as out of lower competitive rates on Eastern United States lines compelled a somewhat lower scale in Eastern Canada than in Western Canada. *Whether or not these reasons now obtain in any substantial degree is a question which requires minute and expert investigation such as can be best conducted by the Railway Commission itself and not by Your Excellency's advisers, but the committee is strongly impressed with the very great desirability of bringing about with the least possible delay equalization of Eastern and Western rates.*

"The Committee of the Privy Council therefore further recommend that as conditions have probably changed materially in recent years tending more and more to make equalization practicable, an inquiry by the Board be directed to be held at the earliest date with a view to the establishment of rates meeting to the utmost extent possible the above requirement as to equalization."

The Board thereupon started an investigation, primarily to ascertain whether or not conditions had changed as suggested by the Order in Council and as to whether the difference in rates, if any, thus existing in a general way between Eastern Canada and Western Canada amounted to undue discrimination against Western Canada.

The first sitting was held at Ottawa on the 22nd day of November, 1920, when it was arranged that the Board would hold sittings in Western Canada in the early spring, and, in pursuance thereof, sittings were held in all the principal cities of Western Canada in the month of April, 1921, again in the months of October and November, 1921, and the final argument took place in Ottawa in the ensuing months of February and March.

Very shortly after arrangements were made for such hearings, application was made by representatives of the provinces of New Brunswick, Nova Scotia, and Prince Edward Island alleging that they were unfairly treated in that the arbitraries over Montreal, which they had enjoyed for many years prior to 1916, had been either abolished or materially increased, and asked that the old arbitraries be re-established.

Then the province of British Columbia applied for the elimination of the Mountain scale of rates as applied to that province, asking that the Prairie scale be extended through to the Pacific Coast.

In addition to this, scores of applications were received from individuals, corporations, and municipalities asking for a reduction of rates either generally or upon the traffic in which they were respectively interested.

The matter was thoroughly discussed and evidence taken over the whole of Canada, in which it was found that while there was a difference in rates between Eastern and Prairie territories, the rates East of Fort William were held down to a large extent by water and other competition, yet the Prairie portion of Canada enjoyed certain advantages therein mentioned, and it was held that no unjust discrimination existed which required correction.

In the case of the Mountain rates, however, a different view was taken. There the rates were based upon a mile of Mountain territory being equal to a mile and a half of Prairie territory, by which the actual rates were figured out at from thirty to thirty-two per cent greater in Mountain territory than on the Prairies.

By General Order No. 366, effective August 1, 1922, this differential was cut in two, and the rates are now figured on the basis of one mile of Mountain territory being equal to one and one-quarter of Prairie territory.

These figures, of course, only apply to Class rates, upon which, it is stated, about fifteen per cent of the total business to and from British Columbia moves, the balance moving upon through Transcontinental or Commodity rates. There are, however, a few commodity rates which may be upon a relative basis to the class rates, especially where they are built upon a percentage of Class rates.

Most commodity rates, and all class rates, applying between two points within the province, would be upon the higher basis.

The Mountain Scale, so-called, does not apply to grain and grain products going to the Pacific Coast for Export, either from the Grand Prairie or Peace River territory.

The rates first established by the Canadian Pacific Railway on grain and grain products to Vancouver for export were published in a tariff effective 8th June, 1909; and the basis for the rates then published, which applied only from points in Albert, was as follows:—

Same rates as apply to Fort William, for equal distances, but using to Vancouver constructive mileage made up as follows:

Shipping point to Canmore, actual mileage; Canmore to Revelstoke, two miles for one actual, Revelstoke to Yale, one and one-half mile for one actual; Yale to Vancouver, actual mileage.

This had the effect, in reality, of adding 335 constructive miles to the actual mileage, then applying to this constructive mileage the same rate as in effect to Fort William for equal actual distances.

The first tariff only covered shipping points in Alberta, but shortly afterwards the tariffs were amended from time to time, taking in additional Alberta territory and also stations in Saskatchewan.

This was the basis of the export rates to Vancouver at the time that the Board issued its judgment in 1914 in what is known as the Western Rates Case. The Western Rates Case included an application from the Board of Trade at Vancouver in the interest of shippers on the Pacific Coast for an Order directing the Canadian Pacific Railway to—

“(a) Cease from making and charging discriminating rates on goods transported by such railway from Vancouver, B.C., to points located in British Columbia, Alberta, Saskatchewan and Manitoba, on the main line, and on the Crow’s Nest Branch Line, as compared with the rates charged by such railway to the same territory (for the greater distance) from Montreal, Quebec and other points on the Atlantic seaboard.

(b) Cease from making and charging discriminating freight rates on wheat and oats consigned from Alberta to the Pacific Coast, as compared with the charges on wheat and oats (for the greater distance) from points in the Prairie Provinces to Lake Superior.

(c) Cease from making and charging discriminating passenger rates to passengers in British Columbia and especially Commercial Travellers, as compared with the passenger rates charged by such railway in other portions of Canada.”

The Board’s judgment in the Western Rates Case did not direct any change in the rates on grain to Vancouver for export.

Effective on 19th May, 1920, at which time the Canadian National Railways established rates on grain to Vancouver for export for the first time, there was some modification in the basis of Canadian Pacific rates. The revised basis of rates added 236 constructive miles to the actual mileage from C.P. Railway main line stations and southern branches. From C.P. north main

line stations and northern branches, they applied the same rate as the C.N.R. from their main line stations of equal distance to Port Arthur, which were on a somewhat higher basis than the C.P.R.'s main line scale.

These rates were, of course, increased and decreased along with the general increases and decreases in all rates during the years 1918 and 1920, as a result of conditions brought about by the war, as covered by General Order No. 212, dated January 15th, 1918; P.C. 1863 dated July 27th, 1918; General Order No. 308, dated September 9th, 1920; and General Order No. 350, dated November 24th, 1921.

On July 6th, 1922, Crow's Nest Rates restored on grain from prairie points to Port Arthur and Fort William by Chap. 41 of the statutes of the Parliament of Canada for the year 1922. Realizing that this would result in complaints against the spread or difference between the eastbound movements to Lake Superior ports, and the westbound movements to Vancouver for export, the Board had a conference with the representatives of the Canadian Pacific and Canadian National Railways, as a result of which the railway companies voluntarily made a general reduction in export rates between prairie points and Pacific coast ports of 20 per cent. These reductions were made effective August 1st, 1922.

The Board had issued its General Order No. 366, dated June 30th, 1922, dealing with rates generally but which did not deal specifically with export grain rates to Vancouver. An appeal was made to Privy Council against this Order by the Attorneys-General of the Provinces of British Columbia and Alberta. Order in Council P.C. No. 2007, dated 2nd October, 1923, issued, referring the matter of export rates on grain to Vancouver to the Board "for immediate determination and such effective action as it may deem necessary." (Quoted in full, Board's Judgments, Vol. XIII, p. 173.)

As a result of said Order in Council, the Board by its General Order No. 384, dated 10th October, 1923, prescribed a reduction in rates of 10 per cent. (Board's printed Judgments, Vol. XIII, pp. 173 et s.)

While, therefore, originally the mountain scale had a bearing on the establishment of these rates to Vancouver for export, that basis was entirely departed from in the Board's judgment of October 9th, 1923. In the Board's judgments, Vol. XIII, p. 180, it will be observed that there was no reference whatever made to the mountain scale, and the rates in effect from October, 1923, to September 15th, 1925, were not based on any mountain scale.

The Board refused to accept the Crow's Nest rates as a basis for grain and flour moving westward, but said the following (page 180 et s.): "If we exclude the Crow's Nest Rates as the proper basis, we must then look for some other method of arriving at what would be considered a just and reasonable basis, and perhaps no better method could be adopted than to go to other parts of the continent where grain is moved in very large quantities under competitive conditions, both as to other railways, and as to water carriers. . . . "Following upon the principles herein before quoted as laid down in the Western Rates case, we must consider the export point to be Montreal, or some other Atlantic Coast port, and as the Montreal rate is practically one cent lower than the rate to New York, Portland, St.-John, Halifax, etc., therefore it would be the most favourable point upon which to make a comparison "Having thus given a large number of actual rates, both in Eastern and Western Canada, it will be seen that no absolute rate can be chosen as the measure of what would be a just and reasonable rate from Prairie points to the Pacific Coast but, perhaps, the fairest method would be to take a point midway between Fort William and Vancouver, and establish therefrom to Vancouver a rate based on the rail-haul eastbound to Montreal.

.....

"If the above described method were pursued, it will, therefore, be seen that it will amount to a reduction in some cases of slightly over, and in other cases

slightly under ten per cent of the existing rates, and in order to preserve the present rate structure, probably the fairest rates could be obtained by making a general reduction of 10 per cent in those existing at the present time."

It will be seen from the above that the purport of the judgment was to equalize as far as possible Eastern and Western rates, taking as a basis the rates from Winnipeg to Montreal, instead of the rates from Winnipeg to Fort William.

If we now come to the principle on which Order 36769 was based, I find it to be the following (Judgments of the Board, Vol. XV, pp. 276 et s.):—

"Previous to the Railway Act amendment of June, 1925, the conditions of affairs as between the Western and Eastern ports in their competition for grain and flour export, was that the latter had the benefit of Crow's Nest rates applied to such commodities moving eastward from points of loading west of Fort William in existence in 1897, although in actual practice a wider construction was put upon the terms of such agreement. But by the amendment of 1925, such rates now apply to grain and flour "moving from all points on all lines of railway west of Fort William, to Fort William or Port Arthur, over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament." In the presence of this legislation, giving rise, it is claimed, to conditions as against the western ports more onerous than have heretofore existed, it is, I think, the duty of the Board to give effect to the provisions of the Railway Act calling for the removal of unjust discrimination, as well as to the instructions of the Order-in-Council, and to provide to all points, whether east or west, an equality, as far as the same may be within its power to do so. I do not think it can be denied that the maintenance of the present inequality places the western ports at a serious disadvantage, and gives colour and substance to the complaint of injustice."

And further, at page 278:—

"It would seem that any relief to business conditions in the form of reduced railway rates must be accompanied by some provision for supplementing railway revenue or by some other action, for the loss of revenue involved in granting applications of this nature, is substantial. *It is open to the Board to grant rates which will produce sufficient revenue for transportation companies, and subject to legislation, it is to be presumed that the Board will be expected to continue such course unless their revenues are supplemented in some other way if that be necessary.*"

I find nothing in the principles just quoted from the Judgment of the 2nd of September which does not fully agree with the principles enunciated in the past judgments of the Board.

It will be interesting to remember that Order in Council P.C. 2434 of the 6th of October, 1920, *inter alia* contained the following words:—

"The Committee is strongly impressed with the very great desirability of bringing about with the least possible delay equalization of Eastern and Western rates."

On the 24th of October, 1923, Order in Council P.C. 2166 issued, and contained the following paragraph:—

"The Committee observes, however, that in view of the vital importance of facilitating the interchange of commodities between the various sections of Canada, railway rates should be maintained at as low a basis as possible having regard to all proper considerations. Accordingly the Committee is of the opinion that, in the future, should transportation

and traffic conditions so change as to render practicable a nearer approach to equalization of rates as between Prairie and Pacific territory, the Board should, in the exercise of its discretion, take such action as may be necessary to bring about this result."

On the 5th of June, 1925, Order in Council P.C. 886 issued, recommending "the establishment of a fair and reasonable rate structure, which would, under substantially similar circumstances and conditions, be equal in its application to all persons and localities."

This language is almost identical with that of the Railway Act.

The result of the above is clearly as follows:—

1. The desirability of bringing about equalization of Eastern and Western rates under the least possible delay was, by the Western provinces, persistently urged upon the Board and the Governor in Council, and admitted by them;

2. The constant trend of the decisions of the Board since 1914, has been tending towards this equalization, and the spread between the Eastern and Western rates was gradually reduced by the Order issued.

3. Though the Governor in Council stated that in their opinion it was not desirable, except under very extraordinary circumstances, that they should undertake to rehear or review the decision of the Board, yet they persistently repeated that, in their opinion, railway rates should be maintained at as low a basis as possible, having regard to all proper considerations, and they instructed the Board to bring about, under the least possible delay, the equalization of Eastern and Western rates.

Order 36769 reads as follows:

"It is Ordered: That the C.P.R. and the C.N.R. companies file tariffs, effective not later than the 15th day of September, 1925, reducing the rates on grain and flour to Pacific Ports within Canada for export, to the same rates, proportioned to distance, as such grain and flour would carry if moving eastward for export."

Does it not follow that Order 36769 is well in line with the Railway Act, the trend of the past decisions of the Board, and the directions received from time to time from the Governor in Council.

The Canadian people are entitled to receive service from the railways that were created at great expense for that purpose, but the railways are entitled to the maintenance of adequate rates which will enable them properly to function, and also to risk new capital in Canadian development.

Let us consider whether the rates ordered by the judgment of the 2nd of September, can produce sufficient revenues for the transportation companies.

I am free to admit that my greatest difficulty, as regards this case, has been to arrive at a satisfactory conclusion on that point.

The principle duty of the Board is indeed to determine what are fair and reasonable rates to be charged from time to time for the various services performed by the railways. To do that, there must be taken into account all relevant circumstances, such as changes in the scale of wages, cost of materials, the effect of competition, and such other facts pertinent to the issue as may be established.

These conditions changed very rapidly since 1920, during the period of reconstruction which followed the war, and, to meet them, the Board found it advisable to issue General Orders No. 308, Sept. 9, 1920; No. 350, Nov. 24, 1921; No. 366, on June 30, 1922; No. 384, October 10, 1923, and No. 36769, on September 2, 1925.

Taking the dollar in 1914 as the standard, the fluctuations in the rates are as shown below:

Eastern Canada		Western Canada	
1914.....	\$1 00	1914.....	\$1 00
1916.....	1 05	1916.....	1 00
Mar. 15, 1918.....	1 21	Mar. 15, 1918.....	1 15
Aug. 12, 1918.....	1 51½	Aug. 12, 1918.....	1 25
Sept. 6, 1920.....	2 12	Sept. 6, 1920.....	1 69
Jan. 1, 1921.....	2 04½	Jan. 1, 1921.....	1 62
Dec. 1, 1921.....	1 89	Dec. 1, 1921.....	1 50

With respect to the specific commodities on which the rates were reduced effective August 1st, 1922, under the provisions of the Board's General Order No. 366, the rate on these, using the same standard, became \$1.78 in the East and \$1.41 in the West.

As it can readily be observed, these orders effected at relatively short intervals, substantial increases or decreases in the tolls collected by the Canadian Railways, as operating and traffic conditions changed from time to time.

For the purpose of this work, the Commissioners who sat had not only the advantage of hearing the evidence, of following the cross examination and listening to the submissions from both sides of the controversy, but they had also a tried experience and a familiarity with railway problems that I have yet to acquire. At the hearing held in Ottawa on the 29th of September, 1925, and the following days, on the application to rescind Order No. 36769, the applicants rested their case on the points of law dealt with in the first part of the present judgment, and they refrained from entering upon the merits of the matter involved.

It was shown at the hearing in Vancouver, and indeed it is a fact of common knowledge and admitted by all parties, that railway companies charge persons from points in the Prairies to Fort William, lower tolls for grain and flour than they charge to persons from points in the Prairies to Vancouver.

In the judgment which preceded Order No. 36769, I read: (page 276): "I do not think it can be denied that the maintenance of the present inequality (in rates) places the Western Ports at a serious disadvantage, and gives colour and substance to the complaint of injustice."

Section 319 of the Railway Act reads as follows:

"Whenever it is shown that any railway company charges one person, company or class of persons, or the persons in any district, lower tolls for the same or similar goods, or lower tolls for the same or similar services, than it charges to other persons, companies, or classes of persons, or to the persons in another district, or makes any difference in treatment in respect of such companies or persons, the burden of proving that such lower toll or difference in treatment does not amount to an undue preference or an unjust discrimination, shall lie on the company. R.S. c. 37, s. 77."

Without being shown wherein the Board erred in its Judgment, on the merits of the question of fact arising on the issue, I am loath to take upon myself to weigh the evidence adduced, and to substitute my own judgment for the judgment of the Board as then duly constituted.

Being unadvised, at the Hearing as regards the effect of the rates ordered on the 2nd September, 1925, on the net earnings of our railways, I have tried to find some light on the subject by the analysis of the statistics of railway operating revenues, expenses and net earnings since 1922.

It will be observed that Order No. 36769 became effective on the 15th of September, 1925. The last returns published by the railways end with the month of October, 1925.

It is difficult to appreciate what effect if any, the rates ordered had on the results obtained.

I attach herewith two statements marked A and B.

Statement A shows the net earnings of the Canadian Pacific and C.N.R. Railways by months, for the years 1922 to 1925; and also, (in so far as the information is available), the number of cars of grain unloaded at the head of the lakes and Vancouver; Statement B shows, for the C.N.R., the number of cars of grain unloaded at the head of the Lakes and Vancouver, as well as net earnings of Western Region by months, for the years 1924 and 1925.

Canadian Pacific earnings, divided between Eastern and Western lines, are not available.

STATEMENT OF CARS OF GRAIN UNLOADED AT HEAD OF LAKES AND VANCOUVER,
ALSO NET EARNINGS, CANADIAN NATIONAL RAILWAYS

	1922			1923		
	Cars Grain Unloaded		Net Earnings	Cars Grain Unloaded		Net Earnings
	Vancouver	Head of Lakes		Vancouver	Head of Lakes	
			\$			\$
January.....			-2,223,163			-596,739
February.....			-2,375,829			-2,709,687
March.....			-979,447			-313,356
April.....			-1,349,516			2,111,185
May.....			-47,055			1,900,358
June.....			-1,963,989			1,120,471
July.....			-1,633,002			1,472,229
August.....			-829,837			2,027,385
September.....		17,628	602,709		12,656	1,845,970
October.....	285	24,242	2,156,744	532	25,169	5,163,470
November.....	562	20,643	753,820	1,013	27,849	4,581,318
December.....			-2,109,089			3,633,960
Total.....			-9,997,654			20,236,564

	1924			1925		
	Cars Grain Unloaded		Net Earnings	Cars Grain Unloaded		Net Earnings
	Vancouver	Head of Lakes		Vancouver	Head of Lakes	
January.....		7,740	449,417			272,803
February.....		2,594	-187,041		3,801	611,724
March.....		1,658	2,293,066		5,004	1,635,723
April.....		3,796	1,255,694		5,469	1,254,532
May.....		11,069	-255,323		4,440	399,940
June.....		15,254	-926,383		2,243	-432,376
July.....		10,755	585,251		4,963	1,924,941
August.....		1,201	713,683		1,098	2,718,405
September.....		53	4,651	140	18,913	3,940,070
October.....	552	19,366	4,693,843	2,746	32,228	8,159,958
November.....	343	19,989	3,714,304	3,147	21,978	.....
December.....		11,504	2,760,283			.....
Total.....			17,244,250			.....

(-) Represents deficit.

**STATEMENT OF CARS OF GRAIN UNLOADED AT HEAD OF LAKES AND VANCOUVER,
ALSO NET EARNINGS, CANADIAN PACIFIC RAILWAY**

	1922			1923		
	Cars Grain Unloaded			Cars Grain Unloaded		
	Vancouver	Head of Lakes	Net Earnings	Vancouver	Head of Lakes	Net Earnings
			\$			\$
January.....			483,477			720,026
February.....			654,488			495,494
March.....			2,420,507			1,979,714
April.....			1,548,773			1,950,879
May.....			2,344,514			1,998,247
June.....			2,362,313			2,422,001
July.....			1,961,908			2,070,034
August.....			2,946,437			3,117,059
September.....	149	16,864	4,585,933	129	15,221	4,497,971
October.....	1,004	32,581	7,802,745	1,751	31,366	8,160,988
November.....	1,030	26,938	5,725,793	1,485	34,841	6,110,470
December.....			3,464,805			3,956,127
Total.....			36,301,693			37,479,010

	1924			1925		
	Cars Grain Unloaded			Cars Grain Unloaded		
	Vancouver	Head of Lakes	Net Earnings	Vancouver	Head of Lakes	Net Earnings
			\$			\$
January.....		3,711	860,399			583,769
February.....		1,752	1,077,850		3,441	1,154,701
March.....		2,531	2,510,799		7,506	2,117,212
April.....		4,346	1,754,918		4,427	1,448,600
May.....		6,169	1,726,470		3,439	908,914
June.....		6,677	2,459,649		2,585	1,584,451
July.....		5,188	2,339,562		4,641	3,388,875
August.....		698	3,168,591		865	4,181,781
September.....	231	5,560	4,547,645	315	25,118	6,267,619
October.....	2,182	21,837	7,022,177	2,597	19,555	7,444,027
November.....	3,098	24,704	6,029,881	3,622	25,563	
December.....		10,288	3,729,301			
Total.....			37,227,242			

**STATEMENT OF CARS OF GRAIN UNLOADED AT HEAD OF LAKES AND VANCOUVER
ALSO NET EARNINGS OF WESTERN REGION, CANADIAN
NATIONAL RAILWAYS**

	1924			1925		
	Cars Grain Unloaded			Cars grain Unloaded		
	Vancouver	Head of Lakes	Net Earnings	Vancouver	Head of Lakes	Net Earnings
			\$			\$
January.....		7,740	— 212,104			— 644,755
February.....		2,594	—1,065,982		3,801	— 784,308
March.....		1,653	— 725,060		5,004	— 490,065
April.....		3,796	— 278,916		5,469	— 325,672
May.....		11,069	— 660,765		4,440	— 1,050,417
June.....		15,254	— 927,970		2,243	— 1,412,919
July.....		10,755	— 435,662		4,963	— 306,433
August.....		1,201	— 440,289		1,098	— 302,141
September.....	53	4,651	66,423	140	18,913	1,798,251
October.....	552	19,366	1,361,954	2,746	32,228	3,873,658
November.....	343	19,989	1,363,252	3,147	21,978	
December.....		11,504	827,768			

(—) Represents Deficit.

By these statements it will be observed that each year, during the months of September, October and November, the net earnings of the Canadian Pacific Railway and Canadian National Railway are very greatly in excess of those of other months of the year, and that during the same period a very heavy traffic in grain is handled to the heads of the Lakes and Vancouver. Does it necessarily follow that the handling of this grain traffic is quite profitable to the railways?

The Railways contend, on the contrary, that during these months not only grain but other traffic is being handled by the railway companies, and that the increase in the grain traffic is accompanied by a general increase in other commodities, on which the rates are relatively higher than on grain.

I do not wish to overload this judgment with statistics, but I will refer to pages 8-9-17-18-19 of the printed submission of the C.P.R. on the application of the government of British Columbia, upon which Order No. 36769 was issued.

Possibly some additional light is shed on the question as to the relationship between the grain traffic and net earnings, by an analysis of the above mentioned statements A and B.

Upon reference to statement "B" the following figures will be noted:

CANADIAN NATIONAL RAILWAYS (Western Region)

Illustration	Month and Year		Cars of Grain unloaded at Head of Lakes	Net Earnings	
				\$	
No. 1.....	August.....	1924.....	1,201	440,289	Deficit
	September.....	1924.....	4,651	66,423	Surplus
	October.....	1924.....	19,366	1,361,954	"
No. 2.....	August.....	1925.....	1,098	302,141	Deficit
	September.....	1925.....	18,913	1,798,251	Surplus
	October.....	1925.....	32,228	3,873,658	"

From these figures it would appear that, as the volume of cars of grain unloaded at head of lakes increased, the net earnings correspondingly increase, and therefore that this grain traffic is profitable. But referring again to the same statements, the following is also disclosed:

Illustration	Month and Year		Cars of Grain unloaded at Head of Lakes	Net Earnings	
				\$	
No. 3.....	June.....	1924.....	15,254	924,970	Deficit
	December.....	1924.....	11,504	827,768	Surplus
No. 4.....	April.....	1924.....	3,796	278,916	Deficit
	May.....	1924.....	11,069	660,765	"
	June.....	1924.....	15,254	924,970	"
No. 5.....	February.....	1925.....	3,801	784,308	"
	May.....	1925.....	4,440	1,050,417	"

By illustration No. 3 we see in June a handling of 15,254 cars, and a deficit of \$924,970; in December, a handling of about 4,000 cars less, and net earnings of \$827,768, or a gain in earnings of \$1,752,738, with 4,000 less cars handled. Then illustration No. 4, taking even figures, shows that with a

handling of 3,700 cars there was a deficit of \$278,000 in April, 1924, and with an increase in the grain traffic in the following month to 11,000 cars the results were a deficit of \$660,000, and again in June, although the grain increased in volume to 15,000 cars, the deficit increased to \$924,000. Then in illustration No. 5 the handling of 3,801 cars in February was accompanied by a deficit of \$784,308, while the handling of a larger number of cars in the next month was accompanied by a larger deficit.

Turning then, to statement "A", and to the figures for the Canadian Pacific Railway, the following illustrations will be observed:

CANADIAN PACIFIC RAILWAY

Illustration	Month and Year		Cars of Grain Unloaded at Head of Lakes	Net Earnings
				\$
No. 6.....	January	1924.....	3,711	860,399 Surplus
	March	1924.....	2,531	2,510,799 "
	April	1924.....	4,346	1,754,918 "
	August	1924.....	698	3,168,591 "
	October	1924.....	21,837	7,022,177 "
	November	1924.....	24,704	6,029,881 "
No. 7.....	July	1925.....	4,641	3,388,875 "
	August	1925.....	865	4,181,781 "
	September	1925.....	25,118	6,267,619 "
	October	1925.....	19,555	7,444,027 "
No. 8.....	May	1924.....	6,169	1,726,470 "
	September	1924.....	5,560	4,547,645 "
No. 9.....	April	1925.....	4,427	1,448,600 "
	August	1925.....	865	4,181,781 "

The above figures would seem to require no comment although I would mention particularly illustration No. 9 where the handling of 4,427 cars in April, 1925, was accompanied by net earnings of \$1,448,600 while the handling of only 865 cars in August of the same year was accompanied by net earnings of \$4,181,781.

Is this not enough to demonstrate how futile it would be for me to attempt to determine what may constitute, under all the circumstances of this case, a fair and reasonable rate on grain and flour moving westward for export, without a full hearing on the merits of the whole matter involved, in presence of all interested parties.

A question of interpretation was also raised, in connection with Order No. 36769. It is admitted that steep gradients exist on the C. P. R. lines between Calgary and Vancouver, and these gradients accounted for the higher rates which have hitherto prevailed there, with the approval of the Board.

The Board's Order No. 36769 made the following directions:

"It is ordered that the Canadian Pacific and the Canadian National Railway Companies file tariffs, effective not later than the 15th day of September, 1925, reducing the rates on grain and flour to Pacific ports within Canada, for export, to the same rates, proportioned to distance, as such grain and flour would carry if moving eastward for export."

The tariffs filed under this Order, and effective on the 15th of September as regards the C.P.R. from Calgary to Vancouver were established on the C.N.R. mileage from Edmonton to Vancouver. From Edmonton to Vancouver via C.N.R. the distance is 766 miles. From Calgary to Vancouver via C.P.R.

the distance is 642 miles, so that in establishing from Calgary to Vancouver a rate based on the Canadian National mileage from Edmonton to Vancouver it will be noted that the Calgary-Vancouver rate was based on actual mileage plus 124 miles. From points east of Calgary this difference of 124 miles is added to the actual mileage to Vancouver.

Complaints were received against this constructive mileage from the province of British Columbia, from the Calgary Board of Trade, from the Lethbridge Board of Trade, from the Native Sons of British Columbia, from Mr. Chard on behalf of the province of Alberta and from the Vancouver Board of Trade.

These protests having been communicated to the Railways, they explained that the tariffs filed were, in their opinion, in accordance with Order 36769, and that this Order being based on Canadian National grades from Edmonton to Vancouver, the tariffs filed under it should also be based on Canadian National mileage between these two points.

The complaining parties were notified that these complaints would be spoken to at a sitting of the Board in Ottawa on the 29th of September. These complaints were listed for hearing on the 29th of September, as sections "N" and "O" of the docket but Mr. McGeer and Mr. Woods decided not to proceed with their evidence and argument, on these phases of the case, at the sittings of the Board then being held, for the reasons mentioned at pages 1983 et s. vol. 444 of the Record.

The objections to the tariffs as filed having been suspended, I am not called upon to deal with them, and the existing tariffs should continue in force for the time being.

It may also be pointed out that at the time the case was heard in Vancouver, none of the arguments put forward by those now appearing on behalf of the different interests, provinces and localities were before the Board, and the matter was heard and determined upon the record then presented. The argument is now advanced by the Eastern and Maritime Provinces that the concession granted to the west under the Order might prevent any benefits from a general readjustment being available for the eastern part of the Dominion. It is not necessary to express an opinion upon that point here, but such contention having been put forward, it should be investigated, and the same may be said as regards the views advanced by the Province of Manitoba, and by the Boards of Trade of Montreal and other cities. I think that having heard what has been submitted by these several interests, it is right that consideration should be given to the effect of the Order in these respects, and to everything that has been urged, or can be urged, on behalf of all the contestants. Ample opportunity therefore will be afforded in the general inquiry, and such reconsideration should, I think, form part thereof.

As far as the railways are concerned, the direct financial loss of this concession falls upon them, and I think it should be open to them, at any time, to come to the Board and show, if they can, that the operation of the Order is seriously detrimental to them, with a view of asking for its rescission or modification, but until it is so demonstrated the Order should not be interfered with. I do not think that any case has been made out at the hearing on this appeal to justify a present rescission of the Order.

To sum up, I think

1. That the motion to rescind or vary the Order should be dismissed.
2. That, inasmuch as many interests which were not represented before the Board when the case was heard have now been brought to our attention, a further consideration of the whole matter should be had, as part of the general freight rate inquiry.
3. That, if the railways so desire, they be at liberty, at any time, on proper notice, to move the Board to vary, or rescind, or modify the Order, upon the

ground that it is unduly burdensome to them, or for any other reason they may desire to put forward, and be able to establish.

4. That pending the final disposition of all the matters involved, the existing rates should continue in force, until such time as the Board, as a result of further investigation, orders otherwise.

OTTAWA, Saturday, December 19, 1925.

Chief Commissioner McKeown and Commissioner Oliver concurred with Deputy Chief Commissioner Vien.

COMMISSIONER BOYCE:

Applications were argued before the Board on 29th and 30th September and 1st October last, upon motions to rescind or suspend the operation of Order of the Board No. 36769, dated 2nd September last, by Counsel representing various interest claiming to be prejudicially affected by the Order.

Those applicants who sought rescission of the Order were the following:

1

- (a) The Montreal Board of Trade, on behalf of the Montreal Corn Exchange Association;
- (b) The Board of Trade of Fort William and the Port Arthur Chamber of Commerce;
- (c) The Canadian Pacific Railway Company;
- (d) Trades and Labour Council of the City of Fort William, Ontario;
- (e) The Winnipeg, Manitoba Board of Trade;
- (f) The Government of the Province of Manitoba;
- (g) The Town of Amherst, N.S.;
- (h) The Province of Nova Scotia;
- (i) The Chamber of Commerce of the District of Montreal.

Those applicants who sought suspension of the operation of the Order, pending the decision of the Board upon the General Freight Rate Investigation, directed by Order in Council, P.C. 886, dated 5th June, 1925, were the following:

2

- (a) The Province of New Brunswick;
- (b) The Regina, Saskatchewan Board of Trade;
- (c) The Moose Jaw Board of Trade, Moose Jaw, Sask.;
- (d) The Council of the City of Winnipeg, Manitoba;

Amongst the applicants are the Governments of the Province of Nova Scotia, New Brunswick, and Manitoba. The position of the Governments of the two former Provinces was placed before the Board by Counsel representing those two Provinces, respectively. The contentions of the Province of Manitoba were contained in a written submission, dated 16th September, 1925, and filed with the Board September 21st, 1925. The contentions of the Government of the Province of Manitoba, with respect to the Board's Order above referred to, are worthy of some special consideration, because of the fact that it is a Government, representative of the farmers of a wheat producing Province of long established importance, and whose interests, as a wheat raising Province, are stated to be prejudicially affected by the making of the order.

The following extracts from the submissions of the Government of the Province of Manitoba, will indicate shortly its position:—

"(1) The Government at present takes no position with respect to the merits of the application of British Columbia for reduced rates on grain and flour to Pacific ports.

"(2) The Government submits that Order in Council, P.C. 886, which gave rise to the general investigation, provides for the dealing by the Board in that general investigation, *after hearing of all parties interested*, with, among other things:

"(c) The increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal.

"That the Westward traffic through the Pacific Coast ports is largely grain and the products transported to the Orient and through the Panama Canal are largely grain and flour. It would seem, therefore, very clear that the subject matter of this order, namely, the rates on grain and flour to Pacific Coast Ports was definitely committed by such Order in Council to the Board to be dealt with in the General Investigation provided by that Order in Council.

"(3) The Board of Railway Commissioners by circular dated July 9th, 1925, informed parties interested that new and material evidence could be submitted in cases already heard and not disposed of. This covers the British Columbia application. The Government of Manitoba was not notified of and did not take part in the hearing of the British Columbia application, *and it desires the right to enquire into and give evidence upon the question of relative operating costs, volume of traffic, and other rate-making factors, all to the end and contention that operating costs and conditions are lower in Manitoba territory than elsewhere and rates to and from Manitoba should accordingly be lower than in Mountain or other territory.*"

and the submissions concluded:—

"(6) The Government of Manitoba regrets that Order No. 36769 was issued in the face of the disapproval of a majority of the Commissioners and is of the opinion that for the purpose of maintaining public confidence in a Board so essential to the country's welfare, that the matter should be considered in the presence of all parties interested, as part of the general investigation.

"For these reasons the Government of Manitoba submits that Order No. 36769 should be immediately rescinded and that the matter be dealt with as a necessary part of the general investigation and in accordance with the Order in Council."

Similar attitude was taken by Counsel for the other Provinces interested, although more general, as affecting the interests of these Provinces, and not directly concerned with questions of costs entering as rate-making factors in the movement of grain and flour with which submissions of the Government of Manitoba deal more directly.

Counsel for the Canadian National Railways supported the applications to rescind the Order, and the arguments of Counsel previously heard in attacking the Order. He asserted that the National Railways had never been heard in the enquiry or at the proceedings in Vancouver in November, 1924, and demanded its right to be heard, and objected to any judgment, affecting the interests of that railway, as the Order purported to do, unless and until the railway had been heard.

Judgment upon the applications was reserved, with the understanding that on account of the importance of the issues involved there should be little delay

in disposing of the question propounded, having special reference to the movement of grain westward during the Fall and Winter of 1925-26. The questions involved in the argument were narrowed down to a very restricted point, namely, whether the Order in the circumstances ought to have been issued and was properly and legally issued as an Order of the Board of Railway Commissioners for Canada. The merits of the question were not in issue. There was no necessity to argue them. They did not enter into the question as to the validity of the Order, to which question of arguments pro and con were directed. To determine the matters involved in the application, no reference to the merits of the application, which the Order in question purported to deal with, was necessary. All members of the Board, therefore, who heard the application were equally able to dispose of it upon the material and arguments before it, and there is, to my mind, no reason why the interests of the public generally or of the various applicants in particular should have been embarrassed and jeopardized by the delay in disposing of these important applications, and which delay is to be deprecated. For my part, I emphatically disclaim any responsibility for such delay. By memorandum on the file, early in October, I indicated, in company with the Assistant Chief Commissioner and Mr. Commissioner Lawrence, my readiness to express my views upon the applications in order that they might be speedily disposed of. Only on 21st December instant did I receive copy of a proposed judgment, concurred in by the Chief Commissioner.

The rates under the Order attacked were made effective 15th September last. Up to the middle of October, or even to the end of that month, a very small percentage of the grain movement (about 6 per cent of the total) had gone through the Port of Vancouver—the larger bulk of movement has occurred since that time in increasing proportion as the Fort William gateway neared its closing. It will be apparent, therefore, that the delay in disposing of these applications has been embarrassing to shippers and dealers generally, as also to the railways concerned in the movement.

In my published opinion, delivered 3rd September last (Board's Judgments, Vol. 15, p. 279) I set out the facts leading up to the making of the Order referred to, and expressed therein my reasons for the view that such order had been improperly made, contrary to the expressed opinion of the majority of the Board, and that such Order being so made, ought not to stand. The ingenious arguments, by Counsel supporting the Order, presented at the hearing of these applications upon examination and due consideration in the light of the provisions of the Railway Act, have not altered the view I then expressed. I hold the same views now, and desire to incorporate in this opinion the facts and opinions I then expressed, with the same force and effect as if they were embodied in this judgment. I shall endeavour, however, to do justice to the painstaking arguments of Counsel in supporting the Order. But, before considering the arguments so addressed to the Board by Counsel supporting the Order, and who contended that the Order was properly and legally issued in the exercise of power vested in them under the Railway Act, a review of the facts leading up to the making of the Order might serve to throw light upon the questions of law bearing upon those facts.

The case, heard at Vancouver in November, 1924, before the two Commissioners was not closed at the time the Order was made. It was, as the records shows, open for argument and further submissions. One of the principal parties to it (the Canadian National Railways) whose revenues would be substantially reduced by the attempted disposition, had never been notified of the hearing, and by its Counsel, on this application, demands that it be accorded the opportunity to which it was clearly entitled of being heard and of putting in its case. Before the Order attacked was issued, Counsel for this National Railway had, in writing, addressed to the Board, insisted upon its

right, accorded to it since the hearing, by the Board in a written notice, dated 9th July, 1924, and which right, if I read the facts aright, the railway possessed irrespective of that notice. The National Railway was not given a reply to that application—and no opportunity was given to it to put in its case—and argue it. I have searched the proceedings and find that there is no evidence, whatever that any notice was served upon the Canadian National Railways of the hearing at Vancouver. If the two Commissioners who heard the case, had the power to decide it, in the name of the Board, it was surely, a denial of common justice to attempt to exercise that power in such an arbitrary manner, in disregard of the insistence of the Company that it had received no notice of the proceedings and desired an opportunity to put in its case and argue it. The fact that local agents of the Railway were present during the hearing does not excuse the want of notice to the Railway Company of the proceedings. They were not instructed upon the application. No Counsel of the Railway was present. The proceedings were not binding upon it because the Railway had not been brought there under force of Statute, and the Board's rules, and there was no waiver of notice of hearing. No one present was authorized to waive the notice, or otherwise bind the railway to the legality of the proceedings. It is almost incredible that such an attempt should have been made, in the name of this Board, to so proceed as to, in effect, confiscate revenues of the Canadian National Railways without due process of law, that is, without conforming to the Board's regulations and rules, and the provisions of the Railway Act as to service of notice of hearings. Neither of the two Commissioners had the power, the Board itself had not the power, to proceed in the absence of such notice. Its service, duly proven, was a *sine qua non*, to the right of the two Commissioners to hear the case at all. This is but a statement of elementary justice, yet it was clearly brought to the attention of the two Commissioners several times, in writing, on the files of the Board, and verbally, at Board Meetings, yet they ignore it: When the two Commissioners attempted to adjudicate upon the case by Order, in the name of the Board, they did so with the fact that they never were seized of the case staring them in the face. And, as the two Commissioners ignored the repeated written and verbal warnings as to this insuperable obstacle, to determination of the case, had the majority of the Board, in whose name this palpable denial of common justice was being carried out, no duty cast upon them to prevent such a manifest injustice? This Order, as to the Canadian National Railways, made under these circumstances had and has just as much validity as a Judgment of a Court of Justice would have condemning a defendant to the payment of money when the defendant had not been served with process, which is none at all. It was the duty of the Chief Commissioner to stay all proceedings immediately this contention was presented to him. He was urged so to do. There were, apparently, in his opinion, more pressing exigencies to be respected than the contention that rights of property were being dealt with by him, as was contended, without due notice or process of law, and in the face of protest from the majority of the Board, he signed the Order in question. I think it is proper to conclude, upon these facts, that the case was not closed, that the proceedings were still open and the hearing uncompleted, and that the Order made was a nullity, and would have been, under the same circumstances, equally a nullity had it been made with the concurrence of the whole Board, instead of against the expressed opinion of the majority thereof as it was.

For another reason the proceedings in the case were not concluded at the time the Order was made.

While the case was still open, (irrespective of the contention as to want of notice of hearing just referred to) for argument and further submissions, the Chief Commissioner, without consultation with the Board, under date 15th February, 1925, in a letter written by him to the Acting-Secretary of the United

Farmers of Alberta, and a copy of which, as sent, is on record on this file, referring to the subject matter involved in the case partially heard at Vancouver, said, in part, as follows:—

"The Board took the initial step of obtaining an equality of freight rate involving, we hope, the removal of all mountain differential, *but as our action has been held up by appeal in the Crow's Nest Pass Agreement matter we have to await its disposition until we know exactly where we stand.* I feel confident that we will be able to attain the full object of your resolution, as well as more satisfactory freight rate conditions than have ever previously obtained, as soon as the ground is cleared and we are able to proceed with the work knowing just what we have to meet.

"May I further say that the Board will welcome any further suggestion on the part of your organization at any time you may be good enough to favour us with the same."

The opening words "The Board took the initial step of obtaining an Equality of rates involving, we hope, the removal of mountain differential &c" clearly refer to the judgment of the Board in the Crow's Nest Pass Case, evidenced by General Order of the Board, No. 408, dated 14th October, 1924, then in appeal both to the Supreme Court of Canada, and to the Governor-in-Council. The same language relative to the same subject matter is attributed to the Chief Commissioner by the "Edmonton Journal" of October 31st, 1924, (extract from which was sent to the Board by the Board's Official Reporters,) as having been used by him in a speech he made at Edmonton, to a gathering of representative farmers, shippers and business men, before, and while on the way to attend the Vancouver sittings at which this case was partially heard. At that meeting the Chief Commissioner is reported as having stated, as follows:—

"When the Board of Railway Commissioners published its Judgment setting aside the Crow's Nest Pass Agreement, it intended neither that its action should be final nor that parties dissatisfied with it should have no redress, Mr. McKeown declared. The Judgment was intended merely as a tentative one, to settle the main issue of discrimination under the old agreement, and the commission, in making such a decision, fully intended that the question should be taken up with the different interests concerned, with the view to arriving at a rates structure that would be equitable and fair to all."

And the report of that meeting closes as follows:—

"Following the remarks made by Mr. McBain, Sydney B. Woods, K.C., summed up the general claims of the meeting. While discussing the Crow's Nest Pass Agreement, Mr. Woods made the suggestion that the Judgment of the Railway Board had apparently been intended to be merely tentative, and in abolishing the Crow's Nest Agreement, to make possible the establishment of a scale of rates fair and reasonable."

"That is exactly right, Mr. McKeown commented at once, thus making it clear that the Board is anxious to bring about a more equitable situation in the West."

The written word in the quoted letter of February, is confirmatory of the spoken word at that meeting.

If the Chief Commissioner is correctly reported as above, (and his letter of the 15th February last, quoted above, would so indicate) the Judgment of the majority of the Board in the Crow's Nest Pass rate case was, in his opinion, intended to be tentative only, and that, following that decision, if affirmed on appeal, further investigation as to complaints of alleged rate inequalities would

be made by the Board, with a view to their adjustment upon what was called the "basis of what was fair and reasonable". This was not the ruling or dictum of the Board, but the voluntary public statement of the Chief Commissioner, made before and while en route to the Vancouver hearing. The letter of the 15th February, to the United Farmers of Alberta, relating as it does to the same subject matter as was involved in the Vancouver case, then in abeyance and open for further argument and submissions, indicate clearly, and in so many words, that the Board was awaiting decision on the appeal in the Crow's Nest Pass case in order to "*know exactly where we stand.*" While this letter was written without consulting the Board, the Chief Commissioner assumed to express therein the views of the Board. The matter had not been considered by the Board and the Board had come to no such conclusion, if conclusion there be, as that indicated in that letter. The question, therefore, involved in the Vancouver Case, then in abeyance as above, was stated by the Chief Commissioner, in that letter of 15th February, 1925, to be "*held up by appeal in the Crow's Nest Pass Agreement matter.*" It is apparent, therefore, from these statements that any decision of the Vancouver Case, involving as it did, just the matter which the Chief Commissioner mentioned, was to stand in abeyance pending outcome of the appeals in the Crow's Nest Pass Agreement case.

The Supreme Court of Canada decided the question of law in the Crow's Nest Pass Agreement case, on or about 26th February, 1925. The appeal to the Privy Council, in the same case, was, however, still pending, and was not decided until 5th June, 1925, when Order-in-Council, P.C. 886, was passed disposing of that appeal by directing this Board to make "a thorough and complete investigation of the *whole subject* of railway freight rates in the Dominion" &c. I extract from the Order-in-Council the following pertinent clauses:—

"The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada, and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade."

"The Committee are further of the opinion that to give effect to this policy, and considering the submissions made by Counsel and important trade organizations representing different provinces and localities in the Dominion as to the disadvantages that would be suffered by such provinces and localities by any partial or incomplete consideration of the freight rate structure, a thorough and complete investigation of the whole subject of railway freight rates in the Dominion should be carried out by the Board of Railway Commissioners, the Body constituted by Parliament with full powers under statute to fix and control railway rates."

"The Committee therefore advise that the Board be directed to make a thorough investigation of the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and in particular to:—

- (a) "The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

- (b) "The encouragement of the movement of traffic through Canadian ports;
- (c) "The increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal."

Between the date of Judgment, by the Supreme Court, in February and the date of the above Order-in-Council, no steps were taken to attempt to close, or dispose of the case. It remained in abeyance.

By the comprehensive reference to the Board of Railway Commissioners for Canada, above quoted, by the explicit directions therein as to the scope of the investigation, and because the Committee of the Privy Council therein deprecated "the disadvantages that would be suffered by provinces and localities *by any partial or incomplete consideration of the freight rate structure &c.*" it became the duty of this Board, as a whole, to embark upon such thorough and complete investigation of the freight rate structure. The hearing at Vancouver was not concluded. It was such "a partial and incomplete consideration of the freight rate structure" as was specially deprecated by the Governor-in-Council to whose orders the Board is, at all times, subject and which it must obey.

The result of "the appeal in the Crow's Nest Pass Agreement matter", referred to in the letter of the Chief Commissioner, was the direction to this Board, by Order in Council, to embark upon the thorough and complete investigation of the whole freight rate structure of railways and railway companies subject to the jurisdiction of Parliament, and, as he stated in that letter that such decision the Board "*would have to await etc.*" the decision upon the appeal, the case at Vancouver—and "the partial and incomplete investigation" therein involved became, by force of the Order in Council, and by the expressed intention of the Chief Commissioner, a part of that "thorough and complete investigation" with the duty of making which the Board was charged by dominant Authority. The Vancouver case thereby, became merged in the general rate investigation. No other conclusion is possible. It was the expressed intention of the Chief Commissioner that it should be so. In his language, in his letter, the Board knew then "exactly where we stand". In view of the terms quoted from the Order in Council it could not be dealt with apart from that reference, and if there could have been any doubt about that, the Chief Commissioner's utterances and letter above quoted remove that doubt completely.

The Board proceeded under the Order in Council, and at a meeting considered a draft of notice, submitted to it, and settled and initialed by the Chief Commissioner, which notice, as a "provision" or proceeding by the Board in the general rate investigation, dated 9th July, 1925, signed by the Secretary of the Board, was sent out throughout Canada to all railways, Provincial Governments, Boards of Trade and other Bodies, persons or companies which might be interested inviting submissions as to that general rate investigation, and specifying the procedure which the Board would follow therein.

This notice was a proceeding, or "provision" made by the Board, under Section 20 of the Act, drafted by the Chief Commissioner, and, as settled in the presence of the Chief Commissioner, contained the following clause:—

"Testimony now before the Board in cases already heard and in which no decision has been given is not to be repeated. New and material evidence in such cases may be submitted in the usual way."

At the time this clause was under consideration by the Board, the Chief Commissioner presiding, the Vancouver Case was especially and distinctly referred to as being included in the class therein provided for.

By virtue of that Section, the Canadian National Railways, in writing, before the Order attacked was made demanded that it be allowed to file "new and material evidence" before the Vancouver case was dealt with as part of this investigation. No notice was taken of such application in the making of the Order.

At several meetings of the Board (after the Order in Council of 5th June was received) at which the Chief Commissioner was present, and at some of which Mr. Commissioner Oliver was present, the whole question of the issues involved in the Vancouver case were discussed by the Board, and all members were aware, before the Order was made, that the majority of the Board was of the view that the Vancouver case could and should only be dealt with as part of the general freight rate investigation.

On the day, 2nd September last, on which the Order was made, and after the matter of the Vancouver case had been under discussion for two days preceding the resolution of the 2nd September—already quoted—was proposed and carried by the majority of the Board. After that resolution was passed the meeting closed—the members withdrew. By the will of the majority of the Board expressed in the resolution, as well as by the various steps I have outlined, the Vancouver case was declared to be a part of and it, ipso facto, had become a part of the general freight rate investigation to be decided only by the Judgment therein. No suggestion that any attempt would be made by the minority to issue any Order to the contrary effect was made up to the time the members left that session. Yet, without any further consultation and within a very few minutes of the close of the meeting, an Order—purporting to be an Order of the Board, and to over-ride the will of the majority, was signed by the Chief Commissioner and issued and its effect telegraphed to interested parties in Alberta and British Columbia, before any of the majority members of the Board had any knowledge that any attempt would be made to issue any Order whatever. Comment on this sort of procedure is superfluous. It speaks for itself.

The resolution of the Board of 2nd September, 1925, was a decision on procedure in the general freight investigation and was made by the Board, at a sitting presided over by the Chief Commissioner (Sec. 12 (2)) at which all members of the Board were present and expressed their views and it was made and completed and passed by the Board before the Order was made therein. It was a final and conclusive Judgment as to the procedure to be followed under the Order in Council, then the duty of the Board to obey, and, in its express terms, it provided that "in terms of the direction so given to it (the Board) by Order in Council P.C. 886, the matter of export grain rates via Pacific Ports, and other matters, if any, pertinent to the investigation in which hearing may have been held but Judgment not rendered, *must of necessity be dealt with as part of the general investigation and under the Judgment to be rendered in connection therewith.*" It was a "provision" or proceeding (Sec. 20) properly and legally made by the Board and was binding upon every member of it to the same extent as any other Judgment, or decision of the Board would be binding upon every member of the Board in that general investigation.

The resolution was sent out by the Board to the railways and all other parties to which the notice of 9th July had been sent.

It will be observed that the decision of the Board, as expressed in its resolution of 2nd September last, in no way dealt with, or touched upon, the merits of what was involved in the Vancouver Case, then open and undecided. It decided that the merits were to be dealt with and adjudicated upon as part only of the general investigation and not otherwise.

The result is, that by action of the Board, inclusive of the quorum of the Board who partially heard the case at Vancouver, that case, then still in abeyance, remained in statu quo pending the hearing of the general rate

investigation, that new and material evidence might be added to that already tendered, and the merits of the case considered by the Board in its decision upon the whole investigation. The "quorum" of the Board who had partially heard the case as a creature of the Board for the purpose, had ceased to function. As such "quorum" it could only at best, and with limited powers, act for and represent the Board for the purpose of a hearing. But at this meeting of the Board, and when the resolution was adopted, the whole Board functioned, with the "quorum" as part of and absorbed in it, and when the whole Board functioned no quorum, or part of the Board could function in opposition to the will of the Board. The whole being greater than, and including, the part.

I feel that no fine analysis or critical examination, comparison and dissection of the provisions of the Railway Act, such as has been presented to us on the arguments of these applications, is necessary, in the light of these facts, and of this history to reach the conclusion, as I do, that the attempt by the so-called "quorum" of the Board to do that which the whole Board declared should not be done is not only futile and of no effect whatever but that in proceeding, after the Board had functioned by its resolution to sign the Order in question, the Chief Commissioner was not acting within his powers in this attempt designed to defeat the will of the whole Board.

The conclusion, to which the facts irresistibly lead, that the Order was made without the authority of the Board, and contrary to its expressed decision, and therefore without jurisdiction, is, I think, so obvious that I need give but a passing comment to the arguments of Counsel seeking to uphold the right in law of the two Commissioners composing the "quorum" to make any Order under the circumstances I have set out.

Under the Railway Act this Commission is constituted to be composed of six members, as a Court of Record, with an Official Seal which is to be judicially noticed. By the interpretation section "Board" is to mean the Board of Railway Commissioners for Canada. Wherever, therefore in the Act, the "Board" is mentioned, the Board as a whole functions, and can only function as does any other Court Tribunal, or Corporation, through its majority. No duties are assigned to any of the six members now comprising the Board, beyond those which I shall presently point out, and beyond those to be performed by any member when appointed by and required to perform certain functions, or duties of the Board.

The Board, as constituted by the Act of 1903, consisted of three members. One was to be designated Chief Commissioner, another Deputy Chief Commissioner, and the third merely a Commissioner. The Deputy Chief Commissioner, under the Act of 1903, had power, *in the absence of the Chief Commissioner, or of his inability to act*, to exercise the powers of the Chief Commissioner. No qualifications in law were prescribed in the original Act for the Chief Commissioner, or Deputy Chief Commissioner. By the Act of 1908 the personnel of the Board was increased to six members—one to be Chief Commissioner and another to be Assistant Chief Commissioner. Both these members, by the Act of 1908, were required to have been a Judge of a Superior Court in Canada, or to be a Barrister, or advocate of at least ten years standing at the bar of a Province, and the Assistant Chief Commissioner was, as he now is, endowed with all the powers of the Chief Commissioner, but such powers were, and are, not to be exercised except in the absence of the Chief Commissioner. Provision in the Act of 1908 was made for the retention of the office of Deputy Chief Commissioner, who, however then, as now, was not required to have any legal training, and who could only act then, as now, in the absence of both the Chief Commissioner and the Assistant Chief Commissioner. The office of Deputy Chief Commissioner, therefore, has, by the Act of 1908, and repeated in 1919, been stripped of all its original functions. The office may be held by a lay member of the Board, and carries with it no duties, or powers, except

in the absence of both Chief and Assistant Chief Commissioner, and, as the Board has provided that neither of these officers shall be absent at the same time, it is difficult to see the practical utility, for the purposes of administration of the Railway Act, of the retention of the office of Deputy Chief Commissioner, provided for in 1903, and whose duties and powers, with added powers were transferred by the Act of 1908 to the Assistant Chief Commissioner, and are now held by him. The Chief Commissioner, or in his absence, the Assistant Chief Commissioner, may sign Orders &c., of the Board. If both be away the Deputy Chief Commissioner (Sec. 11 ss 2) or (ss 4) any other Commissioner deputed by the Chief Commissioner, may sign such, and with the like effect.

Now, as pointed out by Mr. Tilley, K.C., Counsel for the Canadian Pacific Railway Company, while the Board functions as a whole, there are provisions in the Act to facilitate the hearing of cases, such as those provided by Section 12 of the Act. For such hearings two Commissioners shall form a quorum, that is that such a hearing is not constituted in contested cases unless not less than two Commissioners are present. But those two Commissioners are *acting for the Board*. This is made plain by ss (a) of Section 12, where in uncontested cases, one Commissioner may "act alone for the Board." The one Commissioner has just the same power in uncontested cases as the two, constituting a quorum, have in contested cases. But one Commissioner, sitting in an uncontested case cannot decide that case and put his decision into effect. He is acting for the Board; he must report to the Board, and only an Order of the Board to be signed by the Chief Commissioner as a judicial act, can make the decision, or opinion, of that Commissioner the will of the Board as a whole. The same applies equally, and by the same Section, to the functions of two Commissioners sitting as a quorum. Their decision is not the decision of the Board until the Board, by its Order, adopts it, and in the process of adopting it the Board, as a whole, or by a majority, may so function that the Order of the Board coincides with and is expressive of the will of the Board. The practice is, I think, made clear by the reading of subsection (b). The report of one, *with all the powers of two Commissioners* "may be adopted as the order of the Board, or otherwise dealt with as to the Board seems proper." The procedure is analogous to that under the Interstate Commerce Act, applicable to the Interstate Commerce Commission, except that, as regards that Body, those who are delegated to hear cases are not always members of the Commission, but Counsel, or experts who hear and report to the Commission, and the Commission adopts or rejects the reports as it sees fit, but the Commission functions through its Orders as this Board does.

If, under Section 12, any two Commissioners have the legal right, when assigned, to decide any case they may hear, to the exclusion of the rights of the other four members of the Board to express their views thereon, the Statute must authorize a condition of things quite subversive of and contrary to its general spirit and meaning. Only two members of the Board, the Chief Commissioner and the Assistant Chief Commissioner are required to have legal training, and they are the two members of the Board who, one or other, primarily, put the decisions of the Board into effect by Orders of the Board, under the seal of the Board. The other four members of the Board, composing the majority, may be laymen. Two members of the Board may be assigned to hear cases in one part of Canada, and two others in another part. Cases may be presented at each hearing presenting similar features. If the Board, as a whole, is deprived of the power to function by assigning two of its members to hear a case, then one section may decide such question in one way, and the other section may come to an entirely opposite decision in the same question, and, if each section has the right in law, under the Railway Act, free from the opinion of any other Members of the Board (which is the proposition contended for here at the bar, and supported in the Judgment concurred in by the Chief

Commissioner) and if, in each case, as is also contended for, the decision of each section is the decision of the Board, there would be two decisions and two Orders of the Board in direct conflict with each other, for both of which the Board would be responsible. No argument is necessary to the conclusion that the Railway Act, in its wording, or in its spirit, does not permit of, or contemplate any such an absurd result.

Under subsection 2 of section 12, it is provided that the Chief Commissioner, or in his absence, the Assistant Chief Commissioner shall preside. This must refer to the sittings of the Board, as distinguished from the previous provisions of that section as to what may be termed "hearings" auxiliary to the decisions and orders of the Board, and the intention seems to be apparent, that at such sittings of the Board, as distinguished from auxiliary hearings before one or two Commissioners, is to be constituted so that opinion of the Chairman shall prevail when in the opinion of the Commissioners, that is the Commissioners constituting the Board—See Sec. 9, ss 1—agree that there is a question of law. This provision is, I think, conclusive of the negative of what is contended for by those supporting the Order, and distinguishes clearly between what may be done at auxiliary hearings, and at sittings of the Board when decisions of the Board are delivered and the Board's Orders issue thereon.

There is a distinction between "sittings of the Board" and "hearings" (such as may be had under Section 12, ss 1 (a) and (b)). Under Section 20 provision may be made primarily, by the Board, otherwise by the Chief Commissioner, or such other member or members as the Board directs, for (a) "The sittings of the Board" and (c) "the apportionment of the work of the Board among its members, and the assignment of members to sit at *hearings*, and to preside thereat." These "hearings" would seem to be the hearings contemplated by Section 20—first part, and not the "*sittings of the Board*" to be provided for under Section 20 (a).

The final power to put into force by Order of the Board the opinions of members of the Board upon cases heard by them under the provisions of the Railway Act is vested by Statute in the Chief Commissioner, who, as has been pointed out, is required to be either a Judge of a Superior Court of a Province, or a Barrister of not less than ten years standing. In his absence, the Assistant Chief Commissioner, who is also required to have legal training may also sign. The practice in this respect differs from that of a judicial court where a decision of judges assigned to the rota is handed down, or is as a judicial decision, and because the writer of it is a Judge, and all concurring therein are judges, put into enforceable form by a formal judgment, or Order of the court settled and signed by the Registrar, or clerk of that Court.

It follows, I think, that the signing of Orders of the Board by the Chief Commissioner, or the Assistant Chief Commissioner is a judicial act and not a perfunctory procedure. Wherever there has been a "hearing" before two Commissioners, there must, I think, under the machinery the Statute prescribed, be a disposition by the Board, and such disposition involves the exercise of judicial discretion by the Chief Commissioner, or the Assistant Chief Commissioner in signing the Order. The Chief Commissioner, or the Assistant Chief Commissioner who signs the Order of the Board may not have been present at the hearing of the case. (Sec. 12 (1), but whether or not he be present at the hearing of the case, the Board clearly is not deprived of its power to function as regards such hearing. The members of the Board sitting at any hearing of a case do so in the exercise of the functions, not of two members, but of the Board by which they are appointed, and their acts and conclusions must be acceptable to the majority of the Board; otherwise it is impossible that they should represent the decisions of the Board.

This Board, like any other tribunal, functions through its majority. It has done so since its creation. It is in accord with the scheme of the Railway

Act that it should so function, otherwise as I have pointed out, the object, spirit and meaning of the Act would be broken down. There are many cases where the conclusions of two Commissioners, present at a hearing of a case, have become the decision of the Board, but invariably not as of right, but by the adoption of their conclusions by the Order of the Board, and in these cases the Order of the Board has, invariably, been made, and only could have been made, without dissent of a majority of the members of the Board. I know of no case, and I assert that there never has been a case in the history of the Board where, against the will of the majority, in a case considered by the whole Board, before Judgment, no matter before what Commissioners the same was heard, the will and decision of the majority of the Board has not been given effect to, and until this case I have never heard of a suggestion that because two out of six members were delegated to hear a case, and to act therein for the Board their decision, or opinion, when submitted to the whole Board should prevail over the majority of the members of the Board, who delegated them to act for it, and I am equally confident that within the four corners of the Railway Act there is no warrant for any such contention, and that no Section of the Railway Act can be so distorted as to permit of such a construction. Such an assertion of minority control is deplorable, and I think, it is most unlikely that it would have been attempted but for the unfortunate and unauthorized commitments of the Chief Commissioner, in the name of, but without consulting, the Board, in his public utterances before the hearing of this case at Vancouver, and subsequent to the hearing in writing and while the decision of the case was in abeyance and the subsequent and frequent insistence and demands, in writing, on the files of the Board, on behalf of those interested and to whom such statements were made, that such representations should be made good by the Board's Order. I am speaking only of what is of record on the Board's file.

In view of the foregoing, if it is necessary to further affirm the grotesque results, which the suggested construction of Section 12 as presented by those supporting the Order would lead to, I would premise, I think, with reason, that if the two Commissioners who heard the case, and, subsequently, and in the face of the views of the majority of the Board, could make the Order in question, any two Commissioners, had they been so assigned, could have done likewise. It is a poor rule that will not work both ways. But, given exactly the same facts and the same periods of time, the identical evidence and circumstances, but transposing the names of the Commissioners assigned to hear the case in Vancouver, so that the Chief Commissioner was not one of them, then how could such an Order have been made under the Railway Act? The Order could only be signed by the Chief Commissioner, he being present in the transposed situation and joining in the opposition of the majority to such a contemplated decision, or Order thereon. In any event there might be a minority opinion of the two Commissioners at the hearing of a case which could not be put into the form of an Order, while the views of the majority (in which the suggested transposition of personnel included the Chief Commissioner), could be, and in that event would be, evidenced by an Order of the Board representing the majority decision, the minority being helpless—though as the Chief Commissioner himself asserts (I think without consideration of the absurd result) that the minority, having heard the case, would have *power* to dispose of it, while in fact the *power* to dispose of it, in that case would have been exercised by the majority. In this case it was exercised by the minority, solely owing to the accident of the Chief Commissioner being one of the two sitting Commissioners. I think it is apparent that the Chief Commissioner wrongly and illegally exercised his power to sign Orders of the Board, and that it was not a proper exercise of his judicial discretion in signing the Order and thereby to attempt to force the will of the minority upon and over-ride that of the majority.

It is one of the Statutory incidents of an itinerant Court, whose jurisdiction covers the whole of Canada, that hearings should be provided for at different places and before different members of the Board, delegated by the Board to represent the Board and not being the Board. But it is equally apparent as a proposition based on reason and common sense that no two members of the Board, assigned for such particular work, can prevent the Board as a whole from functioning, through its majority, in respect of the same, or any other matters which may be submitted to the two commissioners forming a "quorum," or part of the Board, at a hearing. If it were otherwise the object of the Act would be rendered useless and farcical. This is undoubtedly the rule and practice of this Board. It has been acknowledged by at least one member of the Board who is a party to the making of the Order attacked. Mr. Commissioner Oliver, who joined in the Order attacked, and who now supports **the order as valid**, was the only dissenting member of the Board in the previous judgment of the Board, upon the same identical subject matter, namely, rates on grain to Pacific Coast Ports for export. Mr. Commissioner Oliver was not a member of the Board at the time of, and therefore, could take no part in any hearing thereon, but was appointed to the Board while it was considering its decision, and yet, he asserted what he claimed to be his right to take part in the Judgment, and did so, as the only member dissenting from the Judgment of the Board—reported Volume XIII, pp. 173 et seq. This attitude is strangely irreconcilable with the contention now concurred in by that Commissioner, that only those members of the Board who heard a case can take part in the disposition of it. And, if that practice was followed in the previous case, when the same principles were under consideration, is it to be denied, in 1925, when the principles, asserted by the whole Board in 1923, with the one exception of Mr. Oliver's dissent, are sought to be reversed by two members of the Board, against the expressed will of the majority, neither of these two members being on the Board when the previous case was heard? An almost unbelievable situation of inconsistency and instability is presented.

Take, as an example, the case before us. The hearing in Vancouver, in November, 1924, before the present Chief Commissioner and Mr. Commissioner Oliver involved the same propositions and principles as were involved in the previous case heard and decided, by a Judgment in 1923, concurred in by every member of the Board, with the exception of Mr. Commissioner Oliver, and affirmed principles with the Judgment, upon which the Order now in question was made, purports to reverse by two Commissioners, neither of whom were members of the Board when the previous case was heard by the Board. The previous Judgment, affirming those principles was concurred in by five members of the Board, the Order now in question was made by two, in the face of the contrary opinion of three members of the Board. That two members of the Board should, under the pretence of any power under any Section, or Sections of the Railway Act, reverse, and nullify the opinions and views of eight members of the Board upon an important matter of principle, affecting the basis of rate structure, appears not only a distortion of the provisions of Section 12, but, in its application, strikes at the utility of the whole Railway Act. The whole of the Act contradicts such a proposition. Take another example, cognate to the present case. A general rate investigation is ordered or necessitated, requiring sittings in all parts of Canada. In exercise of its powers and to facilitate its investigation, the Board under Section 12, can divide itself into three sections of two members each, and each section sitting on behalf of, and delegated by the Board for hearing of evidence and argument common to the general investigation. If what is urged upon us by Counsel supporting the Order now in question is to be accepted, each pair of Commissioners has the unquestioned and unassailable right, no matter what may be the views of the other four, to decide and make Order with respect to the matters heard before them. The result would be that functions of the Board, as a Board, would be made absurd.

Section 51 of the Railway Act may be referred to. Some effort was made in the argument by Counsel supporting the Order to show that application for re-hearing of a case, or to vary &c., any decision, could only be made before the members of the Board who had decided the case. Counsel abandoned this argument. The plain reading of that Section answered the contention. The Section clearly confirms in "the Board", the right and power of its own motion, to review &c., a decision, or to order a rehearing of a case before deciding it. This, as Mr. Lafleur points out, is a function of the Board, not of the quorum. If what is contended for as to the right of the quorum to decide any case heard before it, be correct, what is the force of this Section? A quorum, it is contended, may hear, and has the right to decide a case. Suppose that for the purpose of analysis of that contention that argument be granted. Then, under Section 51 the Board, that is, the Board as a whole, may review that decision, or alter or vary it, or it may direct that the case be re-heard "*before deciding it*", (that is before it becomes the decision of the whole Board). The Section gives the Board a power not possessed by Judicial Courts, that is, the power of its own motion, to review &c., its own decisions, or Orders, including, of course, the decision of a quorum, or part of the Board, or to direct a re-hearing of the case before deciding it. The quorum that heard the case may come to a decision, but the power given by this Section to the Board to review, alter, vary &c., that decision, to give a different decision, or, before deciding it, to direct a re-hearing, all of its own motion, is undoubted. It is a statutory provision in plain terms. Then, applied to the present facts, the quorum heard the case, its Judgment was suspended. The Order-in-Council relegated the matters involved to the general investigation. The quorum asserted its right to decide the case, but the Board, functioning under Section 51, decided that *before decision of the case*, it should be re-heard as part of the general investigation, and the Board so directed, in due form, by its resolution of 2nd September, 1924, which constitutes the final decision of the Board upon the question. There was nothing left of the quorum. It had ceased to function. The Board, as a whole, had become seized of the case, and had given its decision with reference to it. The attempt, subsequently made by the quorum, representing the minority, to give a different decision and to make an Order surely was futile and entirely ineffectual. The quorum had no power to function. It was part of the whole, and the whole had functioned under the Act. The matter was decided by the Board.

And when, therefore, after the Board had so functioned, at a full meeting of the Board at which the Chief Commissioner presided, the Chief Commissioner delivered what purported to be a Judgment, concurred in by his colleague of the quorum, and signed, what purported to be an Order of the Board, he attempted to undo, or reverse, by a minority, what the Board as a whole had decided should be done. As I have pointed out, such attempt was futile. The Board had previously decided the matter and the Chief Commissioner and Mr. Commissioner Oliver had no power to sit in appeal upon a decision of the Board, rendered at a session thereof, duly presided over by the Chief Commissioner, at which every member was present, including, of course, Mr. Commissioner Oliver.

Without discussing in more than a very cursory manner the opinion of the Chief Commissioner, which purports to support the Order in question, (because in the view that I take it could have no effect), I would remark that in writing the Judgment the Chief Commissioner propounds certain bases in support of the Order he directs, which, as is pointed out by Hon. Mr. Baxter, K.C., Counsel for the Province of New Brunswick, are in violation of the fundamentals of rate making, and which, if acted upon and put into force by this Board, would completely break down, our transportation system. I quote the following from his judgment, in illustration:—

"The Board is now upon the eve of a general investigation and inquiry concerning freight rates with certain well defined objects in view. If during this work the Board is confronted by the fact that sufficient income for the preservation and maintenance of railway property necessitates freight charges under which business may not be successfully carried on, the Board cannot content itself by ending its journey in an impasse, but rather in my opinion, by uncovering all the facts and conditions involved in this reference it may assist, to that extent, in finding a way out; and while the ultimate steps necessary to such an end may be outside the powers of this Board, yet the consideration of what is involved in this reference should, and I think will, help to show some of the things essential to that purpose. If the amount of railway revenue necessary to be raised in order to be fair and just to the railways from their standpoint, imposes upon business generally a burden which stifles industry and makes work unprofitable, an adjustment is necessary somewhere. The different sections of the country must be enabled to trade, to ship, to carry on business, and a series of schedules must be elaborated which will not fetter the country's industrial activity, but under which it can breathe and flourish. But if in order to deal with the railways in a just and reasonable way and to put them in possession of sufficient revenue to carry on business, having regard to all their obligations, it be shown extraneous aid should be afforded, the decisive question will be whether should aid should be so provided, or the business of the country be injured and retarded."

The proposal involved in this pronouncement is by no means a novel one, nor is it one that is confined to the traffic of this country. It is a proposition hoary with age, which has, in one form or another, and as applied to one class of traffic or another, been proposed to rate regulating tribunals outside this country, and as often it has been rejected as unsound, as it has been rejected as unsound by this Board.

It was found referred to in the British Government Board of Trade Report, 1890, from which I extract the following:—

"It is here necessary to point out that a considerable section of the traders urged that all the actual rates now charged were too high and should be compulsorily reduced &c. The following characteristic letter which we received in the course of the enquiry, sets out this view in a very few words:

"BERWICK.

"What we want is to have our fish carried at half present rates. We don't care a— whether it pays the railways or not. Railways ought to be made to carry for the good of the country or should be taken over by the Government. This is what all traders want and mean to try and get."

The report gives scant comment to such a proposal. It says:

"We do not think that such a proposal would ever receive the sanction of parliament— and later it is referred to as "an entirely inequitable proposition."

It is remarkable that the Chief Commissioner, of this Board, 35 years after this pronouncement, (and the contention was not a new one then), in view of the provisions of our Railway Act, and the many decisions on principle of rate-making affirmed by it during 20 years, should try to exhume and galvanize into life and apparently set up as sound, a contention, on the face of it so untenable under present conditions, and which has been so emphatically rejected by this and other rate regulating tribunals as palpably unsound and inequitable.

I feel sure that the Chief Commissioner, on reflection, of what must have been a hasty conclusion, would not wish to affirm, or attempt to enforce such principles in the name of the Board, or otherwise. If put into force by the Board, nothing but disaster to railway systems could result, with consequent break-down of commerce dependent thereon. That conclusion is obvious.

A further reference to that Judgment shows that the Chief Commissioner indicates that he bases his right to dispose of the Vancouver case upon the Order-in-Council of 5th June, 1925, directing the Board to make a general rate investigation. I quote the following in illustration of this:—

“While it may be said that Parliament could very easily have covered the Western situation by legislation, it does not seem to me that such a statement is conclusive, but rather it is for us to carefully scan the recent legislation, and the directions of Order-in-Council, P.C. 886, not only to see whether the Board’s powers are sufficient to meet the situation (as I think they are) but also to see whether the spirit of such legislation does not direct us to do so. If not, the instructions issued to this Board, under this Order-in-Council appear meaningless as regards this phase of the problem. It is not necessary to embody the whole Order-in-Council in these reasons for Judgment. The objective which it has in view is: The establishment of a fair and reasonable rate structure which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities &c. This carries with it an obligation to effectively implement such instructions, which, to my mind are unambiguous. No action on the part of the Board can produce such result, unless it directs that such rates really be equalized, whether the trade moves in an easterly or in a westerly direction.”

In view of the previous decision of the Board relegating the decision of that case, to the conclusion of the general rate investigation, under the Order-in-Council, as hereinbefore outlined, it hardly seems to be in accord with sound reason and consistency that the Chief Commissioner should base that Judgment upon the Order-in-Council and subsequently, concur in a judgment on these applications which purports to defend it on the ground that the right to dispose of the case rested wholly apart from the general rate investigation and solely upon the ground that because, before such was ordered, two Commissioners, of which he was one, had heard the Vancouver case, they had the right in law to decide it in advance of and irrespective of the provisions of the Order-in-Council passed since the hearing at Vancouver. The two Judgments appear wholly irreconcilable and contradictory.

The cases cited in the Judgment of the Deputy Chief Commissioner, concurred in by the Chief Commissioner and Mr. Commissioner Oliver, are hardly relevant to what is now in question. All the cases were those in which the power of the Court to deal with matters before it, because only a section of the Court had heard the cases, was disputed. There was no question in any of those cases, as there is here, as to the internal views of the Court. The Court defended its Judgment as the Judgment of the Court. Here, the outstanding feature presented is that the Judgment cannot be defended by the Court because it is not the Judgment of, but was contrary to, the Judgment of the majority of the Court. I do not think any case can be found, in any Court, to support what is contended for. The conclusion as to decision by majorities and not by minorities of any Tribunal, is too obvious, too well settled to admit of any judicial doubt or legal dispute about it. As has already been pointed out, the Order in question was so hurriedly signed that the Board’s regulation—requiring that all Orders of the Board dealing with traffic cases, should be referred, before signature, by the Chief Commissioner, to the Chief Traffic Officer and initialled by him. This practice is the subject of a regulation of the Board required to

be strictly observed. By direction of the Chief Commissioner it was not followed in this case. Had the Order been otherwise regular, this non-observance of the regulation of the Board as to issue of its Orders, could not have been an argument against the validity of it, but it is a circumstance for comment as regards an Order so manifestly open to question.

I would hold upon the facts that:

(a) The Canadian National Railways, a party directly affected by the Order had never been served with process in the proceedings, and, at the time the Order was made, the case was still open and that railway had the right to put in evidence and argument.

(b) That the Chief Commissioner of the Board had agreed that the matters presumed to be dealt with by the Order of the Board should remain open and in abeyance until decision upon the appeals to the Supreme Court of Canada, and the Governor-in-Council were disposed of, and that further proceedings should be governed by the ultimate decision on those appeals;

(c) That the Order of the Governor-in-Council, P.C. 886, dated 5th June, 1925, made while the case was still held in abeyance, relegated all matters in question to, and they became part of, the general rate investigation, and thereafter, with the full concurrence of the Chief Commissioner, the case was dealt with by the Board as a whole, as part of the general rate investigation, and so remains, unaffected by the Order, which could, in the circumstances, have no effect whatever;

And I am of the opinion that:

(a) There is no power under the Railway Act, or otherwise in law, vested in any two members of the Board, assigned by the Board, to hear a case, to decide such case in the face of the decision and ruling of the majority of the Board, expressed upon such case at a meeting of the full Board;

(b) That the functions of the "quorum" for hearing the case entirely ceased when Order in Council, P.C. 886, dated 5th June, 1925, was received by the Board, and thereafter all that was involved at the hearing became, was, and is, a part of the general rate investigation so ordered, and was so accepted and decided by the rulings and transactions of the Board on July 9th and September 2nd, 1925; and—

(c) That the Order in question, purporting to be an Order of the Board, was not expressive of the will and decision of the Board, but contrary to the decision of a majority of the members thereof, expressed in writing, in due form at a full meeting of the Board, before the Order in question was made; and

(d) The Chief Commissioner was bound by such decision, as was every member of the Board, and had no right, in law, to sign the Order in the attempt to over-ride the expressed will of the Board, and the provisions of the Order in Council.

Consideration must now be given to the position of those engaged in the carriage of the traffic, the rates for which, now in force, were fixed by the Order. While, when the Order was made there was little movement of grain Westward, and then, and for some six weeks later, the Order could have been rescinded without serious injury to or disruption of the traffic which had commenced to move under it, the long delay, of which I have spoken, in disposing of this matter, has resulted in grain movements being built up under contracts, or otherwise, on the rates put in force by the Railways under the stress of the Board's Order. I should be unwilling that, by reason of an Order of this Board, rightly or wrongly issued, innocent parties acting under the Order, and on the faith of it, should suffer, or that traffic moving under the rates put in force under it should be impeded or embarrassed. It is, I think, the Board's

duty to guard against such a result, irrespective of all that has been said with respect to the Order. I cannot agree that the Order was rightly made, and should, for that reason, be sustained. Facts and law render such a conclusion impossible and illogical. That which has its origin in contradiction of fact, error in law and distortion of statutory enactments, cannot be affirmed, nor can it have legal effect. But, the consequence of the delay that has been permitted since these applications were argued, should not be visited upon those concerned in the movement of the traffic under the present rates put in force, as far as those interested are concerned and affected, under an Order of the Board, of the legality and virtue of which those operating under it were not the judges, and against the enforcement of which they had no direct remedy.

The export grain rates Westward through Pacific ports is now, and since the Order in Council of 5th June last, has been, a part of the general freight rate investigation directed to be made by the Board, and which investigation the Board is required by Statute to carry on and complete, without delay, has been delayed unreasonably and without justification. That work should be expedited. Submissions should be filed in this case, in common with all other cases calling for investigation under the Order in Council, and hearings should be forthwith arranged of all cases, including such further hearing of this case as may be necessary to afford to all interests concerned an opportunity of being fully heard, as expeditiously as possible, and the conclusions and decision of the whole Board upon all that is involved in the investigation, including all that is involved in this case, and in accordance with the spirit and meaning of the Board's resolution, or provision, of 2nd September last should be arrived at and given as soon as practicable. In the meantime, and as a provision in the general investigation, the rates now in force, under the Board's Order, might be permitted to remain in force, for the reasons I have given, pending a decision of the Board in the general rate investigation as to what the established rates, as a result of the whole investigation should be, and then be subject to such adjustment as the Board, as a result of that investigation, decided to make, with full liberty to the railway companies affected to apply at any time in the general investigation, to the Board for such relief as regards such rates as the Board may upon sufficient material and grounds see fit to give by Order, and I would so dispose of these applications.

This result being that applied for by applicants secondly named, and the majority of the Board concurring therein, the Order of the Board should affirm.

(OTTAWA, December 30, 1925.

Commissioner Lawrence concurred with Commissioner Royce.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of the Standard Hardwood Lumber Company, Weston, Ont., against alleged unfair discrimination against Weston in the matter of freight rates on coal and coke from the Niagara Frontier to Toronto, Mount Dennis, and Weston.

File 34061

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

According to the evidence of applicants, there is a distance of 1.3 miles between Mount Dennis and Weston. There is no station at Mount Dennis—simply a yard. From Black Rock to Mount Dennis, the rates on anthracite and coke are respectively \$1.15 and \$1.40 per net ton as against \$1.45 and \$1.90 respectively to Weston.

It was represented at the hearing and not contested that, from the standpoint of development, settlement at the point in question is practically continuous, there being only a vacant field, with a length of a few hundred yards, separating the two places.

The railway, in correspondence on file in reply to the applicants, states that the tariffs show Mount Dennis as being entitled to Toronto group transportation costs. It further urges that there must be a dividing line in the construction of freight rates; that is, in the case in question, dealing with group rates.

It is stated by applicants that the nearest points beyond Weston at which there are at present or are ever likely to be coal yards are between seven and eight miles away, viz., Malton, on the Canadian National, and Woodbridge, on the Canadian Pacific Railway.

Mount Dennis is located close to the northwest border of the city of Toronto, but outside of the city boundaries. It has already been indicated that the town of Weston is adjacent to Mount Dennis. There are coal yards at both places. Where the coal yards of Mount Dennis and Weston are closest to each other, there is an intervening space of about one mile.

It was set out in evidence by the railway that what is now Mount Dennis was given the Toronto terminal rate about seven years ago, when the Canadian Kodak Company was established as an industry in the area in question. When this company located in the area in question, there was no place called Mount Dennis—it was simply farm land.

At the hearing, the following discussion took place:—

"The ASSISTANT CHIEF COMMISSIONER: But it was upon a 5 per cent basis. The Board found that Toronto rates were held down by water competition. Mount Dennis was outside the territory controlled by water competition, and when they extended to Mount Dennis they put in a Toronto rate basis which was lower than the Board had found justifiable, taking into consideration the effects of water competition.

"Mr. McDONALD: It was really not a municipality then.

"The ASSISTANT CHIEF COMMISSIONER: But it was outside Toronto territory, and subsequently because of its industrial importance it was extended and took in the Toronto rate. In exercising your discretion, you put in a certain rate basis in Toronto which was found justifiable upon the basis of water competition. Mount Dennis was not involved, because it was not in existence. Later, you exercised a discretion and gave to Mount Dennis, where the same situation did not exist, the Toronto rate. Isn't that the case? I only want to understand the facts."

No exception was taken to the position as thus summarized.

It was alleged at the hearing that there was a difference in cost of operation as between Mount Dennis and Weston. It should, however, be borne in mind, in view of the explanation given by the railway as to the conditions under which Mount Dennis was included in the Toronto rate group, that nothing is adduced to show identity of cost as between Mount Dennis and adjacent points in the Toronto terminals.

The question of difference in cost having been raised, an opportunity was afforded to the railway to make a submission, said submission to be checked by the Board's Operating Department. The matter has now been gone into by the Operating Department.

As bearing upon the cost, the railway submitted the following communication:—

"Referring further to your letter of the 2nd instant: I have received the following information from our Freight Traffic Manager:—

"The matter of cost has been gone into by our Operating and Engineering Department in Toronto, with the result I am advised that the average haul from Mimico, our west end yard, to the various Toronto terminals is 9.5 miles, while the haul from Mimico to Weston is 13.58 miles, and on this basis the excess haul to Weston over the average, figured on the average car-mile cost in Toronto terminals, viz., 61 cents, would, including the return of the empty car from Weston, for the difference in distance represent \$4.98 over and above the average cost for handling cars in what are known as Toronto terminals.

"If, however, we figure on the actual difference in distance between Mount Dennis and Weston on the basis of 61 cents per mile, this would only give us 95 cents per car, although it is hardly fair to base a service involving 1.56 miles, which of course includes terminal operations, on an average cost covering 9.5 miles.

"I venture, however, to express the opinion that additional cost of service is not a basis upon which the rate to Weston can be reasonably or properly fixed. For example, it is well known and I think admitted by every one that the interswitching charge of 1 per cent per 100 pounds which we are allowed for placing C.P.R. road haul cars in any part of our Toronto terminals does not begin to cover cost, and if there is to be any modification of the present rate to Weston, we submit that it should be not less than the rate to West Toronto or Mount Dennis plus at least the interswitching charge above referred to of 20 cents per ton."

As already pointed out, the distance between Mount Dennis and Weston given as 1.3 miles. While the difference is not very material, the letter which has been cited states that Weston and Mount Dennis are 1.56 miles apart. The distance from Mimico to Weston is shown in the said letter at 13.58 miles. The time-table mileage, however, from Mimico yards to Weston is shown at 13.74 miles. This mileage is taken in the computations which follow.

Deducting 1.56 miles from the figures above given gives a mileage of 12.18 miles from Mimico yards to Mount Dennis. On the figure of 61 cents per car-mile given in the railway's submission, there would be a cost per car from Mimico to Weston of \$8.38, and from Mimico to Mount Dennis of \$7.44. On the basis of a 40-ton car, this would give a cost per ton of 20.95 cents in the case of Weston and 18.6 cents in the case of Mount Dennis; or a difference of 2.35 cents per ton.

In practice, cars are transferred by switching operations from Mimico to Bathurst Street Junction, a distance of 6.21 miles. From Bathurst Street Junction, they are moved to Mount Dennis and Weston by the Stratford way-freight train. There are, therefore, two factors to consider: the switching cost per car-mile, and the car-mile cost in the way-freight train service.

The car-mile cost in train movements in the Central Region of the Canadian National Railways, exclusive of the rental of equipment or interest on the investment, is 12.967 cents. The distance from Mimico to Bathurst Street Junction—6.21 miles—is common to both. At the rate of 61 cents per car-mile, this gives a factor of \$3.78. From Bathurst Street Junction to Mount Dennis is 5.97 miles. At the rate of 12.967 cents per car-mile, this gives a factor of 77 cents. For the distance from Bathurst Street Junction to Weston, viz., 7.53 miles, there is a factor of 97 cents.

The cost as thus computed from Mimico to Mount Dennis equals \$3.78 + 77 cents; or \$4.55. From Mimico to Weston, \$3.78 + 97 cents; or \$4.75.

It is computed that on the average a movement between Bathurst Street Junction and Weston and Mount Dennis would occupy a car two days; so \$2 per diem charge may be added to the above figures. This would give a cost per car of \$6.55 on the Mount Dennis movement and \$6.75 on the Weston movement. On the basis of a 40-ton car, the difference in cost so computed between Weston and Mount Dennis is one-half cent per ton.

At the hearing, reference was made to the fact that while the mileages vary, there was a number of mileages in the Toronto Terminal group which were in excess of the distance to Weston. The distances from Bathurst Street Junction to various points in Toronto terminals and Weston are as follows:—

Danforth	6.4	Oriole	12.3
Davenport	3.6	Parkdale	1.3
Davisville	9.4	Swansea	3.6
Don (Cherry St.)	2.7	Toronto (Union Station)	1.0
Leaside	15.6	West Toronto	3.9
Mimico	5.6	Weston	7.4
Mount Dennis	6.1		

With the exception of Weston, the above points all take the Toronto rate on anthracite coal from Black Rock and Suspension Bridge of \$1.15 per net ton. It will be observed that there is a shorter haul involved to Weston than to Davisville, Leaside, and Oriole.

In *Galbraith Coal Co. vs. C.P.R.*, 10 *Can. Ry. Cas.*, 325, there was concerned a situation where as the result of a too rigid adherence to mileage, there was a sudden break in the rate in the case of shipments from producing points to common destination, the distance in mileages as between shipping points being slight. The railway, at p. 332, was directed to correct these anomalies; and it was recognized by the railway, at p. 331, that where there was a slight distance between points it was justifiable to make the same rate from the two shipping points to common destination.

See also *Great West, Byers Mine Coal Cos., and Edmonton Collieries vs. G.T.P. Ry. Co.*, 23 *Can. Ry. Cas.*, 175.

On the record, I am of opinion that on the coal and coke movements concerned Weston should be given the same rates as Mount Dennis.

January 14, 1926.

Commissioner Boyce concurred.

ORDER No. 37274

In the matter of the complaint of the Standard Hardwood Lumber Company, of Weston, in the Province of Ontario, against alleged unfair discrimination against Weston in the matter of freight rates on coal and coke from the Niagara Frontier to Toronto, Mount Dennis, and Weston.

File No. 34061

THURSDAY, the 21st day of January, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, October 14, 1925, in the presence of representatives of and counsel for the Standard Hardwood Lumber Company and the Canadian National and Canadian Pacific Railway Companies, and what was alleged,—

The Board orders: That the railway companies who publish tariffs applying on coal and coke, in carloads, from the Niagara Frontier gateways, amend the same so as to apply to Weston, in the province of Ontario, the same rates as published to Mount Dennis; the said amendments to take effect not later than the 1st day of March, 1926.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 37225

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic its Cowichan Bay Branch from mileage 6.56 to mileage 7.45 Tidewater Sub-Division.

File No. 27847.32

MONDAY, the 4th day of January, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Cowichan Bay Branch from mileage 6.56 to 7.45 Tidewater Subdivision.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 37231

In the matter of the application of the Canadian Northern Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic the portion of the Cowichan Subdivision between mileage 82.8 and 83.31.

File No. 27847.31

TUESDAY, the 12th day of January, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the portion of its Cowichan Subdivision from mileage 82.8 to 83.31; and that the applicant company be relieved from maintaining the speed limitation of twenty miles an hour imposed by the Order of the Board No. 37032, dated November 4, 1925, on the portion of the said line from mileage 73.2 to 82.8.

S. J. McLEAN,

Assistant Chief Commissioner.

GENERAL ORDER No. 426

In the matter of the Order of the Board No. 37188, dated December 23, 1925, requiring that the provisions of General Order No. 425, dated the 13th November, 1925, as to amendments to tariffs on high explosives, be put into effect not later than the 8th day of January, 1926; and the application of the Canadian National and the Canadian Pacific Railway Companies for a further extension of time until the evening of February 3, 1926.

File No. 33502

MONDAY, the 18th day of January, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Montreal, January 8, 1926, in the presence of counsel for the railway companies, and what was alleged, and its appearing that further questions of law and fact would be submitted for the consideration of the Board at its regular sittings at Ottawa, on the 2nd day of February, 1926; and the understanding that the railway companies, in the meantime, would make their additional submissions, serve them on the parties interested, and be prepared to be heard on the said matter at such sittings,—

The Board orders: That the time within which the requirements of the said General Order No. 425 as to amendments to tariffs on high explosives be put into effect be, and it is hereby, extended until the evening of Wednesday, February 3, 1926.

H. A. McKEOWN,

Chief Commissioner.

ORDER No. 37264

In the matter of the application of the Canadian National Railway Company, hereinafter called the "applicant company," under section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic its Pine Falls Branch from the connection with the applicant company's railway, Victoria Beach Subdivision, at mileage 48, Beaconsia, Manitoba, easterly to Pine Falls, a distance of 19.5 miles; also the north leg of the wye at the junction at Beaconsia, a distance of 0.16 of a mile.

File No. 34390.2

THURSDAY, the 19th day of January, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby authorized to open for the carriage of traffic that portion of its Pine Falls Branch from the connection with the applicant company's Victoria Beach Subdivision, at mileage 48, Beaconsia, in the province of Manitoba, easterly to Pine Falls, a distance of 19.5 miles; also the north leg of the wye at the junction at Beaconsia, a distance of 0.16 of a mile; the speed of trains over the said line not to exceed a rate of twelve miles an hour.

H. A. McKEOWN,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Mr. Z. A. Calhoun, Dunblane, Saskatchewan, for a private crossing with cattle guards, instead of a crossing with gates, on his property, which is crossed by the Canadian National Railways.

File 34200.

JUDGMENT

COMMISSIONER BOYCE:

The applicant's farm, near Dunblane, in the province of Saskatchewan, is crossed at the northeast corner by the track of the Canadian National Railways, leaving the buildings on the northeast side of the track. The rest of the farm is to the west and south of the railway, so that to get access to the road allowance the applicant has to cross the railway track. A farm crossing is established according to standard of the Board's regulations, with farm crossing gates, which crossing is subject to the provisions of section 272 or 273 of the Railway Act.

Under date, August 25, 1925, the applicant applied to the Board to make this crossing a private crossing with cattleguards. The situation has been examined by an Engineer of the Board together with all the conditions surrounding the case.

The railway company objects to the application being granted, on the ground that the farm crossing now established is in accordance with the provisions of the Railway Act, and that the installation of an open farm crossing would increase the danger of operation and would constitute a farm crossing and public crossing without authority in law. The openings in the right of way fences on the applicant's property, for the purposes of the farm crossing are of standard width of 15 feet, and by section 275 of the Railway Act the applicant is required to keep the gates at each side of the railway closed when not in use. In the circumstances in which the applicant's property is bi-sected by the railway, the applicant complains of the necessity for opening and shutting these gates, as he is required to do very frequently each day in order to reach the rest of his farm and the roadway beyond. This, doubtless, is an inconvenience, but not such as is not common to every farm crossing provided under the Railway Act.

I think it is clear that the provisions of the Railway Act, which are binding upon the Board and which the Board has no power to vary, must prevail in this case, and that the relief for which the application applies cannot be granted.

It is clearly a statutory duty of the railway company under section 274 (1) (b), to erect and maintain—

“swing gates in such fences at farm crossings of the minimum height aforesaid (4 feet 6 inches) with proper hinges and fastenings.”

It is also the duty of the railway company, under the same section (ss. 1), to erect and maintain upon the railway, fences of a minimum height of four feet six inches on each side of the railway, so that with the exception of the provisions under sections 272 and 273 for farm crossings, and subject to the provisions of section 274 (1) (b) as to gates at farm crossings, the railway company is subject to the statutory duty of fencing its line. The Board has no discretion to vary these provisions and the relaxing of them in a particular case would be to increase the hazard of operation of the railway, facilitate accidents and create an undesirable precedent.

In the following cases applications of a similar nature have been refused:—

File 20072: Application G.T.P. Branch Lines Co., for authority to instal farm-crossing on its Tofield-Calgary Branch for William Abner Lynch.

File 618.53: Application of Mr. Peter P. Dick, for an Order directing the Calgary and Edmonton Railway Co. to provide and construct a suitable open crossing where the company's railway intersects S.W. $\frac{1}{4}$ Sec. 7-31-1 W. 5 M.

File-Case 4684: Complaint of Mr. H. J. Dynes, Burlington, Ont., against the Dominion Power & Transmission Co. for building a fence between their right of way and the public highway and relative to inconvenience caused by gates at his property.

File 25919: Application of the Canadian National Railways for exemption from fencing Main street, Ribstone, Alta., inside the limits of the station grounds.

In all of which cases the principles above referred to were affirmed by the Board.

I think it is clear, therefore, that to grant the application in this case would not only be to violate the wholesome precedents laid down by the Board, but would infringe upon Statutory enactments as above pointed out, which are binding as well upon the Board as upon all other persons affected.

The application must be refused.

OTTAWA, January 13, 1926.

Chief Commissioner McKeown, Assistant Chief Commissioner McLean, Deputy Chief Commissioner Vien, and Commissioners Lawrence and Oliver concurred.

Application of the Railway Association of Canada, for an Order relieving railway companies subject to the jurisdiction of the Board from placing a slow Order for trains passing over level highway crossings at which an accident has occurred and at which protection has already been provided.

File 16781

Heard at Ottawa, Tuesday, March 17, 1925.

JUDGMENT

COMMISSIONER BOYCE:

There was involved in the hearing of this case the interpretation of section 309, subsection (c), of the Railway Act, which reads as follows:—

“309. No train shall pass at a speed greater than ten miles an hour,—

“(c) over any highway crossing at rail level, if at such crossing, subsequent to the first day of January, one thousand nine hundred and

five, a person or vehicle using such crossing, or an animal being ridden or driven over the same, has been struck by a moving train, and bodily injury or death thereby caused to such person or to any other person using such crossing, *unless and until* such crossing is protected to the satisfaction of the Board;”

In effect, this was a rehearing of an argument with reference to the informal ruling of the Board, dated October 9, 1922, which was concurred in by every member of the Board and to which reference may be made. See Board's Judgments and Orders, Vol. 12, October 15, 1922, p. 153.

The matter arose from an inquiry from Mr. W. C. Chisholm, K.C., then General Solicitor of the Grand Trunk Railway System, under date January 5, 1923, as to whether in the view of the Board it was necessary to place a slow order, under General Order No. 77, May 30, 1911, at crossings protected by a watchman, or by gates and watchman, where an accident has happened, resulting in bodily injury, or death, to a person using the crossing.

Mr. Chisholm was advised, under date January 11, 1923, that the situation appeared to be that the railway companies have the option of appointing a watchman, temporarily, and that form of protection is accepted in lieu of a slow order imposed by the statute.

It was then brought to the attention of the Board, November 26, 1924, by the Chief Operating Officer of the Board, that the Canadian National Railways were not observing the ruling of the Board of October 9, 1922, above referred to, as regards the placing of slow orders at crossings protected by watchmen or gates, and, under date November 29, 1924, the Canadian National Railways was written to, calling its attention to the non-observance of this part of the ruling of the Board, and that the ruling referred to “ confirms the practice that following an accident these restrictions must be placed in all cases, unless and until the crossing is protected to the satisfaction of the Board.”

The matter was, thereafter, taken up by Mr. Fraser, K.C., counsel for the Canadian National Railways, and submissions were made to the effect that where a crossing was already protected, by a watchman, and where an accident happens, that because there was a watchman, under General Order No. 77, the existence of that form of protection was sufficient to prevent the statute from operating and that the crossing was in fact protected to the satisfaction of the Board.

Mr. Fraser was advised, under date December 15, 1924, that in the application of the provisions of General Order No. 77 regard must be had to the provisions of the Board's ruling of October 9, 1922, as regards its effect upon these crossings where an accident occurs, which are either (a) unprotected, or (b) protected by other means than by watchman. That if a crossing were protected by a watchman at the time that an accident happens, under the ruling of the Board of October 9, 1922, the crossing would, therefore, become, in consequence of the accident, “ under suspicion ” and a slow order would have to be imposed just in the same way as if the crossing were unprotected, or protected by other means than that of a watchman.

Under date December 27, 1924, the Canadian National Railways were informed that if they desired to pursue their objection the Board would set the matter down for hearing, as a matter of general policy, in which other railways interested should be heard. The matter was then taken up under date February 10, 1925, by the Railway Association of Canada, and, under date February 14, 1925, reference was made to the former rulings and letters above set forth, and the Railway Association having requested to be heard, the matter was set down for hearing and was discussed fully by counsel representing the Railway Association of Canada, the Canadian National Railways, the Canadian Pacific Railway Company, the New York Central Railway Company, and by representatives of the Michigan Central Railway Company, and the Dominion Legislative Board,

Brotherhood of Locomotive Engineers. Since the hearing a written submission was made by counsel for the Canadian Pacific Railway Company. Having in view all that was stated in the informal ruling of the Board upon this question, dated October 9, 1922, and to the plain statutory provision of section 309 (c), I have been unable, after listening to all the arguments that have been presented, to change the view that I expressed in the informal ruling referred to.

If the section (309 (c)) means anything at all it is a statutory prohibition, which the Board cannot vary, against any train passing over a highway crossing, at rail level, at a speed greater than 10 miles an hour, if at said crossing, subsequent to January 1, 1905, a person or vehicle using such crossing, or an animal ridden or driven over the same has been struck by a moving train and bodily injury or death thereby caused to such person, or any other person using such crossing, "*unless and until* such crossing is protected to the satisfaction of the Board." Whatever that section means it is mandatory and not subject to the discretion of the Board.

As to the meaning, or interpretation of the section, in so far as it is concerned with what is involved in this application it centres around the latter portion of the section, viz., the words "*unless and until* such crossing is protected to the satisfaction of the Board.

I find it difficult to harmonize the contentions of counsel for the railways with the emphatic words of the section quoted. They have already been discussed in the informal ruling of the Board. It is contended by counsel for the railways that these words are not to be interpreted in the sense mentioned in the informal ruling of the Board, but that they mean that if there is already at the time of such an accident, as is contemplated by this section, a formal protection at the crossing satisfactory to the Board that that crossing is, within the meaning of the section, "protected to the satisfaction of the Board."

While the matter has been fully dealt with in the informal ruling of the Board referred to, which I think should not be changed, I would emphasize, in further extension of the meaning of the section, the fact that where a crossing has been protected to the satisfaction of the Board, and that protection, say by watchman, or by gates, or by bell and wig-wag, has been in force for many years without an accident occurring, that if such an accident happens the crossing as a result of the accident is not "protected to the satisfaction of the Board", but that the efficacy of the protection provided at the crossing, and at the time of its provision being satisfactory to the Board, is called in question by the occurrence of the accident. Perhaps the most cogent example would be the case of protection of a crossing by a watchman. A watchman is installed, and after a considerable time, perhaps an accident occurs at the crossing so protected. Argument is advanced and insisted upon that because the watchman was there at the time of the accident and that it is a form of protection satisfactory to the Board, under General Order No. 77, no slow order should be imposed, because the watchman is a protection satisfactory to the Board. This argument, I think fails to convince, because of the words "*unless and until* such crossing is protected to the satisfaction of the Board." If the crossing be protected, as above, or in any other way, and an accident happens, the method of protection is brought into question, as indicated in the informal ruling; and the whole condition of the safety of the crossing is in question as a result of the accident, and the Board's functions are called in question by the accident to determine whether the crossing is properly protected and the safety of the public using the highway is duly conserved. Consequently, if I read the plain language of the section correctly, there is a halting point as to every form of protection caused by the fact that an accident has happened at that crossing, protected or unprotected. If it be protected, that protection, such as it is, is under suspicion, and the Board's investigation of the accident must determine the adequacy, or otherwise, of that form of protection. If it be an unprotected crossing, there is also a halt called

by the modification of the speed at which traffic is allowed to move over the crossing, while the Board decides what, if any, protection is required and is adequate for the conditions which are brought before the Board as a result of this investigation into the cause of the accident. The accident, therefore, is the fact, which under section 309 (c) calls in question, in the case of an unprotected crossing, the question whether any protection at all, and if so, what form of protection is required, and in the case of a protected crossing, whether the protection in the form satisfactory to the Board at the time that it was placed there, is, or is not, shown to be inadequate and insufficient by the facts surrounding the accident which are to be investigated by the Board. Therefore, the words "unless and until such crossing is protected to the satisfaction of the Board" are included in that section. Counsel argued against what I considered to be the plain interpretation of these words. It was argued that these words—unless and until—are simply an emphatic "unless". I cannot so interpret these words in their combined and relative meaning. If the word "unless" only had been used, there might have been greater force in the argument presented, although even then I do not think that it would have been at all conclusive when taken in connection with the meaning of the section generally. But, the combination of the words "unless and until" I think emphasizes all that has been said before and in the informal ruling of the Board with regard to the interruption which must necessarily take place as a consequence of the accident, as regards the form of protection and the doubt which is cast upon its sufficiency by the circumstances of the accident.

By reference to the dictionary, I find that the word—unless—means "if it be not a fact that". I also find that the word—until—is defined to mean "up to the time that". Applying these words then according to this meaning, which is standardized, the speed restriction must extend

(a) "if it be not a fact that" (unless), and

(b) "up to the time that" (until)

"such crossing is protected to the satisfaction of the Board". I think the word "until", in its applied meaning, clearly indicates that futurity which is mentioned in the informal ruling and which is amplified herein. It argues a point of time at which the satisfaction of the Board with the present protection (in the case of a protected crossing) is to be affirmed by the Board as satisfactory and adequate. The combination of these two words, I think, makes plain that there must be a new decision by the Board in review of the adequacy of any form of protection and of the decision by which it was installed, and that until ("up to such time as") that decision is reached, as a result of the investigation in consequence of the accident, the speed restriction imposed by statute applies. It is doubtless a hardship and inconvenience and some expense to the railway companies that there should be this interruption and slowing down of traffic. In many cases where accidents occur, at protected crossings, it is found, as a result of the investigation into the causes of the accident and the conditions of the crossing and the adequacy of the protection, that the protection already there is sufficient, and in such cases the speed restriction imposed by statute is removed by an order of the Board declaring the crossing sufficiently protected to the satisfaction of the Board. But, the answer to this well-grounded complaint is that the provision is statutory and leaves the Board no discretion, in my mind, and, in the judgment of the Board, as expressed in the informal ruling referred to, as regards the imposition of the speed restriction, statutorily imposed. It is a mechanical statutory interruption of the traffic, slowing it down to 10 miles an hour at that point, pending an investigation by the Board, and subject to such decision as the Board shall make on all that is brought to its notice as regards the danger of the crossing and the causes of the accident. The Board's function in such a case must be to conduct its inquiry and form its decision as expeditiously as possible, in order to minimize the inconvenience which must necessarily ensue for a temporary period during this examination.

I think that it must be apparent that any other interpretation of the section would defeat the very object of the statute, which is to conserve the safety of the public at grade crossings. Protection ordered by the Board, and which was adequate for the traffic, when ordered, perhaps years ago, might become with increased highway and train traffic, improved roads and growing motor traffic, wholly inadequate, and yet if an accident occurred, it is contended that there should be no speed limitation imposed, that the old protection should be maintained, and conditions remain undisturbed by the accident. I think that the requirements of public safety render the broader interpretation of the section essential if there be ambiguity in its wording, which I am unable to find.

I think that the previous ruling of the Board is the correct one, applicable to the section of statute as it stands, and I find myself unable to yield to the ingenious arguments that were presented to us at the hearing, in the effort to secure a variation of that ruling. The effect of the ruling has been communicated to the railways, and I am of opinion that it should be affirmed, and that the railways should observe it in the interests of public safety.

OTTAWA, January 15, 1926.

McKEOWN, CHIEF COMMISSIONER:

I think this application should be dismissed.

January 26, 1926.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I agree. I think it is clear that under section 309, especially clause (c) thereof, the speed limitation of ten miles an hour, in the case of accident, continues "unless and until such crossing is protected to the satisfaction of the Board." I am unable to accept the view that the section means that once having found protection satisfactory there is, under this, a blanket assertion of satisfaction covering any or all cases that may arise in the future.

Where there is protection which the Board has found satisfactory, it may, in many cases, work a hardship, from the operating standpoint, to have the speed limitation applied in the case of accident subsequent to the installation of protection which the Board found satisfactory. However, it is clear that the Railway Act intends that where an accident takes place, the Board shall consider the facts, and that until this is done and the Board finds that there is protection to its satisfaction, the speed limitation applies. Each case, under the section, has to be dealt with by itself. The Board may, in the case of an accident, have directed bell and wig-wag protection; another accident occurs and it may find that some superior type of protection is necessary.

Since the Act provides that the speed limitation is not to be lifted unless and until the crossing is protected to the satisfaction of the Board, I am unable to see what leeway we have to say that the protection found satisfactory on particular facts will take the railway out from under the speed limitation in respect of a subsequent accident.

I recognize that there are features of hardship; but the way to remove them is by giving the Board a discretionary power under the section which it does not at present possess.

January 27, 1926.

Commissioner Oliver concurred.

*Complaint of the Cowichan Ratepayers Association, Cowichan Station, B.C., re
British Columbia Telephone Company, Limited.*

File 32560.

Heard at Victoria, B.C., November 18, 1925

JUDGMENT

COMMISSIONER BOYCE:

This complaint was initiated by a letter from Mr. C. Wallich, Honourary Secretary to the Cowichan Ratepayers' Association, under date February 6, 1923, in which complaint was made against the proposal of the Telephone Company to lay down an arbitrary boundary between Cobble Hill and Duncan Exchanges, and asking that no order be made by this Board without giving the association a hearing on the question.

Under date February 12, 1923, Mr. Wallich was advised by the late Chief Commissioner that as the complaint was confined to the internal operations of the Telephone Company, and as the Board's powers were confined to questions of tolls and tariffs, he did not think the Board had jurisdiction over the complaint.

No further action was taken by complainant until August 20, 1925, when a letter was received from Mr. Wallich on behalf of the Ratepayers' Association of Cowichan requesting the Board to grant a hearing at the next sitting in Victoria on the ground that there was a great deal of dissatisfaction throughout the district owing to the arbitrary readjustment of boundaries in the neighbourhood. This complaint referred to the question of tolls but it was limited to the long distance toll of 10 cents per call between the two exchanges of Cobble Hill and Duncan. A copy of this complaint was sent to the Telephone Company under date September 2 last, with a request for its answer in so far as the reasonableness of the rates charged were involved.

Under date October 9 last the complainants were again advised that the Board had uniformly held in many decisions, that under the Railway Act, its jurisdiction was confined, as to telephone companies subject thereto, to tolls and tariffs, and that it had no power to inquire into or adjudicate upon questions of operation or service—which include changes, from time to time, of the boundaries of exchange areas, except in so far as the reasonableness of the tolls and rates are involved in such change, and only then to the extent that such tolls or rates were involved.

The complainant was then informed that a copy of the complaint of August 20 last had been sent to the Telephone Company, and the Telephone Company had delivered its reply in its letter of September 17, copy of which was inclosed to the complainants, and the complainants were invited to reply thereupon, such reply to be confined to the specific issue as to the reasonableness of the tolls and rates, and the Board desired to know whether in view of what had been submitted, and of the Board's limited powers in regard to the matter, the complainants still desired a hearing.

Under date October 31 last, the complainants telegraphed asking for a hearing, and the matter was thereupon set down for hearing and heard at Victoria, November 18, 1925.

I have referred at some length to the correspondence preliminary to the hearing in order to show the conditions and limitations which the Board, by reason of its restricted jurisdiction, was compelled to place upon the investigation of the complaint in order that such complaint might be dealt with at the hearing and confined to matters within the jurisdiction of the Board, viz., the reasonableness of the tolls and rates involved.

The facts are very simple and such as are common to many cases of a similar nature. The Duncan Exchange was established many years back, long before the Cobble Hill Exchange was established. The latter exchange was established, it is said, about ten years later than the Duncan Exchange.

Complaints were made to the Telephone Company with regard to service of both Cobble Hill and Duncan Exchanges. Some of these complaints, as is usual, emanating from the Retailers' Association of Cobble Hill who complained that there were people getting service into Duncan who should be served from Cobble Hill, which meant, that the Retailers' Association of Cobble Hill were anxious to get as many subscribers in the Cobble Hill area in order to increase the business of retail stores in the Cobble Hill section.

These complainants object to be removed from the Duncan Exchange area and attached to Cobble Hill. On the contrary the Retailers' Association of Cobble Hill, in a letter to the Telephone Company, dated July 19, 1923, emphasized their objection, previously made verbally, against rearrangement by attaching subscribers to Duncan instead of Cobble Hill. As a result of the examination by the Telephone Company into the conditions, the new line was drawn as indicated by the map between the Cobble Hill and Duncan Exchanges, with the result that a certain number of the complainants, formerly in the Duncan Exchange were attached to the Cobble Hill Exchange.

The tariff of tolls as established in these exchanges and against which the complainants offer some objection for a twenty-four hour service is as follows:—

In addition to the above there is a long distance rate between the two

In addition to the above there is a long distance rate between the two exchanges of 10 cents for five minutes and 5 cents for each additional five minutes. The two-number, or station to station conversation rate is 10 cents for five minutes and 5 cents for each additional five minutes; and for person to person 10 cents for three minutes and 5 cents for each additional minute. These rates it is alleged by the Telephone Company, and not denied by the complainants, are exactly the same as those charged in twenty-three other exchanges

of the British Columbia Telephone Company where conditions are similar, and all of which rates are approved by the Board and contained in Tariff C.R.C. No. 7, and these rates have been in effect practically for some twenty years.

There was no evidence submitted which attacked this tariff from a point of view of being unreasonable for the service involved.

I do not think that the tariff is successfully attacked on that ground. The complaint was directed against and practically confined to the long distance charges involved and which were a natural rate consequence of the readjustment of the exchange areas. It is not unnatural that those who suffer by the revision of the boundaries should complain of the inconvenience, but their complaint here must be confined to tariff complaints.

Mr. Wallich, for the complainants, put this contention before the Board in this way:—

“All our subscribers find that their rates are increased, and that they do not get the service, although they do get a flat rate a little lower, but when they come to pay their long distance rates their charges are increased, for the simple reason that all their business and social connections are with Duncan, and when you come to add them together the rates are very materially increased.”

The above succinct statement from the complainants makes it clear that their complaint as to rates is confined as a result of separation from the Duncan Exchange, to such long distance charges as are involved. There are no real complaints that can be substantiated against the tariff as quoted.

The long distance charges in question are such as have been approved by the Board in many other cases, and as the Board has nothing to do with the conditions resulting in the change in the exchange areas, bringing some of the subscribers formerly in the Duncan Exchange into the Cobble Hill Exchange, there cannot be, in that fact, any conclusion that the long distance charges, approved by the Board, are in any way unreasonable and they are not attacked as such. I would therefore find that the complaint is not substantiated and must fail.

The conditions here are much the same as those involved in the complaint of the Union of British Columbia Municipalities *re* new exchange established at Kerrisdale and increase in long distance tolls resulting therefrom which was before the Board in 1921, and in which decision of the Board is reported in Judgments, Orders, etc. of the Board, Vol. 11, p. 325.

The following cases illustrative of what I have pointed out may also be referred to:—

Tinkess vs. Bell Telephone Company, 20 C.R.C. 249—Town of Dundas, *et al* vs. The Bell Telephone Company—Judgments, Orders, etc. of the Board, Vol. 11, p. 83.

Re complaint Corporation of Saanich, B.C., and Cadboro Bay Committee, Cadboro Bay, B.C., *re* proposed extension of the Gordon Head Telephone Exchange, B.C., British Columbia Telephone Company—Judgment, Orders, etc. of the Board—Vol. 15, p. 63.

Complaint of the Towns of Riverside, Tecumseh, *et al*, against the division of Exchange territory made by the Bell Telephone Company in the district surrounding Windsor and the proposed increase in rates.—Judgments, Orders, etc. of the Board, Vol. 15, p. 263.

The complaint under the circumstances cannot be sustained, and order will go accordingly.

JANUARY, 22, 1926.

Assistant Chief Commissioner McLean concurred.

COMMISSIONER OLIVER:

Cowichan is a station on the Esquimalt and Nanaimo Railway, 35½ miles north of Victoria. There are telephone exchanges at Cobble Hill station, four miles south of Cowichan and at Duncans, four miles north. There are 150 subscribers on the Cobble Hill Exchange and 580 on the Duncans Exchange. Duncans is an important business center, having all varieties of business which constitute a well established country town. Cobble Hill is a much less important business center than Duncans. The Duncans Exchange was established a number of years before that at Cobble Hill and residents in the vicinity of Cowichan station who desired telephone facilities were connected with the Duncans Exchange, paying the usual and regular rates.

Sometime before 1922 an exchange was established at Cobble Hill and the company established a boundary between the Cobble Hill and Duncans Exchanges. At Cowichan the exchange boundary projected a wedge of the Cobble Hill Exchange into the Cowichan settlement, leaving the station and the settlers to the east, northwest and southwest in the Duncan Exchange, but placing those residing near the railway line southerly and southeasterly from the station, in the Cobble Hill Exchange. As practically all the telephone subscribers affected transacted their business with Duncans and not with Cobble Hill, the actual effect of their transfer from one exchange to the other was to increase the cost of their telephone service, while its usefulness and efficiency was decreased. Instead of the flat monthly rate paying for all communications with Duncans as formerly, all such communications had to be paid for at ten cents each. The Duncans Exchange has a twenty-four-hour service, while the Cobble Hill service is only from 7 a.m. until 10 p.m.

The complaints heard were against this increased cost of service, coupled as it was with decreased usefulness.

The British Columbia Telephone Company was represented and admitted the facts to be as above stated. They did not offer any evidence that there had been any default on the part of the subscribers affected or that the increased cost and decreased efficiency complained of was because of any costs or disabilities that had been incurred by the company in regard to those services.

Their statement shortly was that, having decided to include the complainants within the Cobble Hill instead of the Duncans Exchange, with which they were formerly connected, they must suffer whatever disadvantage might follow that change of connection without remedy.

In this connection I desire to point out that the boundaries of a telephone exchange area are purely imaginary lines adopted for purposes of definition only; and have no relation to the actual operation of the service. While the Telephone Company has the undoubted right to adjust the boundaries of its various exchanges at will, and to arrange for future services within those several areas, I have been unable to find any authority for its assumption, as in the case of the Cowichan complaint, that an arbitrary definition of boundary between two exchanges constitutes warrant for the cancellation of contracts in good standing, held by subscribers who may happen to find themselves on one side or the other of the newly established boundary.

No doubt there are occasions when the change of rates following the establishment of new exchange boundaries should be sanctioned by the Board, even though increases may be involved. Of necessity such occasions can only occur when the boundaries are such as are found to be fair to subscribers, as regards both service and rates. My conclusion from the evidence placed before the Board is that the new boundary between the Cobble Hill and Duncans Exchanges was not drawn with due regard to the convenience of the complaining subscribers. I find support for this view in a letter from the General Commercial Superintendent of the British Columbia Telephone Company to the Secretary of the

Cowichan Ratepayers' Association, dated October 13, 1922. At one point in his letter, the commercial superintendent says:—

“We cannot however, find any fairer or more reasonable basis upon which to establish a boundary line than the principle that all subscribers must be connected with their nearest exchange.”

At another point he says,—

“We know of only one fair and equitable way in which to create this boundary and that is to make it equi-distant between the Duncans and Cobble Hill Exchanges.”

It would appear from this letter, as it did from the evidence given at Victoria, that there was no reason for the increased rates and deteriorated service imposed upon the complainants, other than the determination of the company to declare a boundary without regard to any of the conditions which had led to the subscribers entering into a contract in the first place.

In my opinion, the company has shown no sufficient cause or warrant for the increased cost and inconvenience suffered by the complainants, whether they have submitted to the increased rates demanded by the company or have given up their telephone because of the cost and disadvantage of the imposed service.

In regard to subscribers now connected with the Cobble Hill, but formerly connected with Duncans, and who desire the Duncans Exchange in place of the Cobble Hill; in my opinion the company should be required to reinstate them forthwith in their connection with Duncans, so far as rates and service are concerned.

In regard to persons not now subscribers but who were formerly connected with Duncans, and whose telephones were taken out because they did not desire the Cobble Hill connection: I am of opinion that the company should be required to reinstate their telephones at the company's sole cost and to give them connection with Duncans at the former rates and conditions of service.

As to the residents of the Cowichan area within the limits fixed by the company which assign them to the Cobble Hill Exchange, who have not yet had telephone service, and who expressed the urgent desire for telephone connection with Duncans but refused it with Cobble Hill; I am of opinion that their case is not within the jurisdiction of the Board.

OTTAWA, January 28, 1926.

Application of the Canadian Pacific Railway Company for an Order of the Board directing the Canadian National Railways to remove locks placed on switches at the Cohen and Crawford sidings which connect with the Kingston Branch line, between Queen and Princess Streets, Kingston, Ont.

File 22450.7

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Complaint is made by the Canadian Pacific Railway Company that the Canadian National has taken the position that the former is not entitled to operate on two specific sidings in Kingston, viz., the Cohen and Crawford sidings. These sidings connect with the Kingston Branch line between Queen and Princess streets. The Canadian National has locked the switches on these sidings.

The Canadian Pacific contends that under an agreement entered into in 1874 between the Kingston and Pembroke Railway, the predecessor in title of the Canadian Pacific, and the Grand Trunk Railway Company, the predecessor

in title of the Canadian National Railways, the Kingston and Pembroke obtained by agreement the right to operate in common with the Grand Trunk a specified portion of the Kingston Branch line. The Canadian Pacific Railway Company sets out that the sidings in question connect with a portion of the line concerned. An agreement of 1880 was also gone into at the hearing. The fact that the sidings in question do connect with a portion of the track over which there are joint running rights is not disputed by the Canadian National Railways.

It is admitted by the Canadian Pacific that its rights, if any, in regard to spur track operation are limited to spur tracks off the track the two railways use in common.

The Cohen spur was authorized on the application of the Grand Trunk Railway Company by Order No. 27463, of July 22, 1918. The question of restricted clearances on the spur in question was dealt with by Order No. 29385, of February 17, 1920. The spur track on the Cohen property is 138 feet long and there are 80 feet on the railway property.

It is stated by Cohen & Company that the siding in question was built by them at their own expense, under the supervision of the Grand Trunk Railway Company. It was stated that both the Canadian Pacific and the Canadian National, as well as the latter's predecessor in title, had placed cars on the spur track. Cohen & Company desire to have the service continued.

From the submissions made, this track has been jointly served by the two railways until recently. A communication of September 4, 1925, from the agent of the Canadian National at Kingston to the agent of the Canadian Pacific at the same place was read into the record by counsel for the Canadian Pacific Railway Company. This reads as follows:—

"I have been instructed to advise you that inasmuch as the private sidings of Messrs. I. Cohen & Company and R. Crawford leading off our main line between Queen and Brook streets were constructed by us, i.e., in each case made absolutely with the Canadian National, that if and when the Canadian Pacific Railway has cars to be delivered or lifted on either of these private sidings, the cars are to be regularly interchanged with the Canadian National Railways, and we will place or lift the cars, assessing switching charges under the usual switching arrangement.

"Will you please acknowledge receipt?"

Correspondence in this matter between the two railways was apparently continued for a period of approximately six weeks.

The Crawford spur was built by the Canadian National in 1924. This was built under a siding agreement. Crawford paid \$563.62; and, in addition, he paid an annual rental of \$33.50. He has had the service of both these railways since the siding was constructed, and desires to have this continued.

The application is launched under sections 35 and 193 of the Railway Act. In representing that the matter should be dealt with under section 35, the Canadian Pacific admitted that the right for which it contended under the agreement to operate spurs off the joint section is not covered by any explicit statement in the agreement. It arises, it was contended, by implication. In other portions of the railway company's argument, reference was made to the user of the spurs as interpreting by conduct what the parties to the agreement had in mind.

As has been pointed out, the Board is a statutory tribunal. *Duthie vs. G.T.R. Co.*, 4 *Can. Ry. Cas.*, 304. See also *B.C. Electric Ry. Co. vs. V.V. & E. Ry. Co.*, and *City of Vancouver, A.C.*, 1914, 1067, at p. 1074. It has also been said ". . . jurisdiction is limited to such matters that the Act plainly and clearly covers. There should be no straining after jurisdiction." Per Mabee, C.C., *Canadian and Dominion Exp. Cos. vs. Commercial Acetylene Co.*, 9 *Can. Ry. Cas.*, 172, at p. 174.

The provisions of what is now section 35 of the Railway Act came into that legislation in 1908. Section 8, chapter 61, 7-8 Edward VII. See also section

1, chapter 32, 8-9 Edward VII. Prior to that, the Board had no jurisdiction in regard to the enforcement of an agreement. In view of the fact that the jurisdiction so conferred was an invasion of the field hitherto occupied exclusively by the courts, the exact words of the section are worthy of the most careful consideration.

As was stated by Chief Commissioner Mabey in *Seager vs. Pere Marquette Rd. Co.*, "the ordinary courts have jurisdiction of the widest kind to enforce all sorts of agreements that should be enforced."

On referring to section 35, it would appear that the "company" (that is the railway company) "may have an agreement with any such corporation or person," because reference is made to the redress which the "company" may obtain, on account of any such corporation or person having violated or committed a breach of an agreement between the "company" and any such corporation or person. On the other hand, there may be complaint on or on behalf of the Crown, or any municipal or other corporation, or any other person aggrieved, that the "company" (that is the railway company) has violated or committed a breach of the agreement between the complainant and the company.

Under the section, there is no provision specifically setting out that complaint may be made by one "company" against another "company" in respect of a breach of an agreement existing between these two companies. The "company", it is true, may complain that "any such corporation" has committed a breach of the agreement; but I do not consider that "corporation" here is to be read as equivalent to a "company". The only other party against whom complaint can be made is a "person". "Person," it seems to me, must be read as a natural person, not as a legal person.

I am of opinion that section 35 does not apply to an agreement between two railway companies.

Referring to the application under section 193, the Canadian National stated that it did not know of any case—thought there was no case—where the Board ever ordered the use of spur tracks from any line that was not jointly owned. It was stated that in the *Pardee Avenue Case*, *Board's Judgments and Orders*, Vol. 5, p. 141, there was a track jointly owned, and that this differentiated the *Pardee Avenue Case* from the present one.

Dealing with section 193, the Canadian National admits that the Board has discretion to grant under this section the order asked for, but it is contended that if the application is so treated it must be as if the Canadian Pacific were coming in for the first time.

I am of the opinion that the Canadian Pacific should be allowed to operate the spurs in question forthwith. The terms of compensation by the Canadian Pacific to the Canadian Northern, if not agreed upon by the parties within one month from the date of the order, may be brought before the Board, on the complaint of either party, for disposition by the Board.

January 29, 1926.

Commissioners Lawrence and Oliver concurred.

ORDER NO. 37270

In the matter of the application of the Canadian Northern Saskatchewan Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic its Turtleford Southeasterly Branch from mileage 0, at the junction with the Turtleford Subdivision of the Canadian National Railways at mileage 56.2, for a distance of 23 miles; also the north leg of the wye at the said junction, a distance of 0.24 of a mile.

File No. 26653.10.

THURSDAY, the 21st day of January, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Chief Engineer,—

The Board Orders: That the applicant company be, and it is hereby, granted leave to carry traffic over that portion of its Turtleford Southeasterly Branch from mileage 0, at the junction with the Turtleford Subdivision of the Canadian National Railways, at mileage 56.2, for a distance of 23 miles; also the north leg of the wye at the said junction, a distance of 0.24 of a mile—until the 1st day of August, 1926; the speed of trains operated over such line to be restricted to a rate not exceeding twelve miles an hour.

S. J. McLEAN,

Assistant Chief Commissioner.

GENERAL ORDER NO. 427

In the matter of the application of the Canadian Pulpwood Association, hereinafter called the "Applicant," under Section 325 of the Railway Act, 1919, for an Order amending the freight tariffs of the Canadian Freight Association and the Canadian Pacific Railway Company applicable to pulpwood, modifying and altering the minimum loads therein defined, on carload lots, from 90 per cent to 80 per cent of the cubical capacity of the cars, subject to destination measurement, for the purpose of establishing, when and in what case such cars are to be considered and taken as fully loaded.

File No. 19475.79.3.

THURSDAY, the 28th day of January, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, Quebec, January 8, 1926, in the presence of counsel for and representatives of the applicant, the Canadian Freight Association, the Canadian Pulp and Paper Association, and the Canadian Pacific and the Canadian National Railway Companies, and what was alleged,—

The Board Orders: That railway companies subject to the jurisdiction of the Board who publish tariffs naming rates on pulpwood, in carloads, in which the following provision is contained, namely: "Cars will not be considered fully loaded unless containing 90 per cent of their cubical capacity, subject to destination measurement," shall amend the said tariff provision to read, "Cars will

not be considered fully loaded unless containing 87 per cent of their cubical capacity, subject to destination measurement;" the said amendment to take effect not later than March 15, 1926.

H. A. McKEOWN,
Chief Commissioner.

ORDER NO. 37289

In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement "D" to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.80.

THURSDAY, the 28th day of January, A.D., 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board Orders: That the Revised Supplement "D" to the Express Classification for Canada No. 6, filed with the Board by C. N. Ham, Chairman of the Express Traffic Association of Canada, with his letter of January 22, 1926, be, and it is hereby, approved; the said supplement to be published as No. 5.

H. A. McKEOWN,
Chief Commissioner.

ORDER NO. 37292

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 188 of the Railway Act, 1919, for approval of location and detail plan No. C. 1925, dated December 30, 1925, of proposed station at Pickerel River, Sudbury Subdivision, in the Province of Ontario, on file with the Board under file No. 34411.

FRIDAY, the 29th day of January, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Operating Officer,—

The Board Orders: That the location and details of the applicants' proposed station at Pickerel River, on the Sudbury Subdivision, in the province of Ontario, as shown on the said plan on file with the Board under file No. 34411, be, and they are hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

ORDER NO. 37296

In the matter of the application of the Esquimalt and Nanaimo Railway Company, hereinafter called the "Applicant Company," for approval of its Standard Tariff of Parlor Car Fares, C.R.C. No. S-10, on file with the Board under file No. 9451.16.

SATURDAY, the 30th day of January, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders: That the applicant company's said Standard Tariff of Parlor Car Fares, C.R.C. No. S-10, on file with the Board under file No. 9451.16, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,

Chief Commissioner.

ORDER NO 37297

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for approval of its Local Standard Passenger Tariff of Sleeping and Parlor Car tolls, C.R.C. No. S-17, on file with the Board under Case No. 4569.

SATURDAY, the 30th day of January, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders: That the applicant Company's said Local Standard Passenger Tariff of Sleeping and Parlor Car Tolls, C.R.C. No. S-17, on file with the Board under case No. 4569, be, and it is hereby, approved; the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,

Chief Commissioner.

ORDER NO. 37298

In the matter of the application of the Edmonton, Dunvegan and British Columbia Railway Company, hereinafter called the "Applicant Company," for approval of its local Standard Passenger Tariff of Sleeping and Parlor Car Tolls, C.R.C. No. S-5, on file with the Board under file No. 30186.4.

SATURDAY, the 30th day of January, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders: That the applicant company's said Local Standard Passenger Tariff of Sleeping and Parlor Car Tolls, C.R.C. No. S-5, on file with the Board under file No. 30186.4, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,

Chief Commissioner.

GENERAL ORDER NO. 428

In the matter of the General Order of the Board No. 389, dated January 21, 1924, amending General Order No. 78, dated July 14, 1911, prescribing the rules and instructions for the inspection and testing of locomotive boilers and their appurtenances, by striking out clause 36 thereof, with respect to lubricator glass shields, and substituting therefor the clause set forth in the said General Order No. 389.

File No. 6948.5.

MONDAY, the 1st day of February, A.D. 1926.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon reading what is filed on behalf of the Canadian Pacific, Algoma Central and Hudson Bay, and Quebec Central Railway Companies, the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen; and upon the report and recommendation of its Chief Operating Officer,—

The Board Orders:

1. That the time within which the changes in the said appurtenances shall be made be, and it is hereby, further extended until the 1st day of January, 1927.

2. That the said General Order No. 389, dated January 21, 1924, be, and it is hereby, amended by striking out the words, "reinforced plate," in clause 36 of General Order No. 78, as amended by General Order No. 389, and substituting therefor the words, "specially toughened glass."

H. A. McKEOWN,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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In the matter of General Order No. 426, dated 18th January, 1926, extending until the evening of February 3, 1926, the time within which the requirements of General Order No. 425, dated 13th November, 1925, as to amendments to tariffs on high explosives be put into effect, for the purpose of enabling consideration of further submissions dealing with questions of law and fact.

AND

In the matter of the application of the Canadian National Railways for a rehearing of the application of the Canadian Explosives, Limited, of Montreal, for reduction in the rates on high explosives and for a rescission of General Order No. 425, dated 13th November, 1925, and of Order No. 37188, dated 23rd December, 1925

File 33502

ORAL JUDGMENT DELIVERED AT THE CLOSE OF THE HEARING, FEBRUARY 2, 1926

The CHIEF COMMISSIONER: The application for rehearing in the matter of reduced rates on high explosives between Canadian points, spoken to this morning, will now be disposed of.

After a hearing on the 16th day of December last, before the Assistant Chief Commissioner, Mr. Commissioner Boyce, and myself, a considered judgment was delivered by the Assistant Chief Commissioner, concurred in by my brother Boyce and myself, by which judgment the application of the parties complaining was, to a degree, allowed. This was followed by an order of the Board, No. 425, dated the 13th day of November, 1925, by which it was directed *inter alia*, that the railway companies, subject to the Board's jurisdiction, should amend their tariffs on high explosives, and that the rates therefor should not exceed the current class rates where lower than standard mileage rates on carload shipments.

Application for rehearing was made on December 12, by written submissions on the part of the Canadian National Railways, and after giving consideration to what was therein urged, an order, No. 37188, was made by the Board on the 23rd day of December, 1925, under the hand of the Assistant Chief Commissioner, concurred in by Mr. Commissioner Boyce, that the application for a rehearing be refused, and that the requirements of the General Order 425, as to amendment of tariffs on high explosives be put into effect not later than the 8th day of January, 1926.

Subsequently, while three members of the Board were in the city of Montreal, on the 8th day of January, 1926, an application was made by counsel

for the Canadian National Railways for a further rehearing to be based upon new questions of fact and law, whereupon a further order of the Board was made reciting that it appeared from the statement of counsel that further questions of law and fact would be submitted for the consideration of the Board, touching on this matter, at its regular sittings in Ottawa on February 2, 1926, and that the railway companies would in the meantime make additional submissions and serve them upon the parties interested, and thereupon the Board ordered that the time within which the requirements of the said General Order 425 as to amendments of tariffs on high explosives be extended until the evening of Wednesday, February 3, 1926. That is, until to-morrow night.

We have had the parties before us this morning, and as set out in the orders which I have alluded to, the application which was to be based on new questions of fact and new questions of law to be placed before us, has been heard. I have carefully listened to all that has been urged, and I cannot find that anything submitted by counsel for the railways is at all different from that which was before us previously, and at the time the matter was decided by the Order of November 13, 1925. For that reason, nothing new having been developed, I think that the present application should be dismissed.

The ASSISTANT CHIEF COMMISSIONER: I concur.

The DEPUTY CHIEF COMMISSIONER: I concur with the Chief Commissioner.

I did not have the advantage of sitting when the matter was brought before the Board, but I am fully satisfied that it received the careful consideration of the Board as then constituted, and only under extraordinary circumstances, it seems, would a rehearing be justified. Nothing has been adduced this morning, on matters of fact or of law, that would justify the rehearing of the application. It would be, I think, a violent assumption—as Mr. Lafleur put it—to say that the Board overlooked anything that was submitted to it at the time the first application was disposed of.

Mr. Parker, in the month of August, drew the attention of the Board to the then pending General Investigation, and requested their opinion as to whether his application would form part of the General Rate Investigation.

Subsequently, on December 12, Mr. Fraser, on behalf of the Canadian National Railways, also pointed out the very reasons that he invoked this morning.

As has been put by the Assistant Chief Commissioner, the matter involved in this application on its merits is purely concerned with the reasonableness of a particular rate, and I do not believe that it involves the whole matter which is the subject of the General Rate Investigation.

The complaining parties were notified at that time that this matter would be spoken to. They were invited to present their submissions, and they did so to the best of their ability, and they did it efficiently. The Board as then constituted found that the evidence justified a reduction of the rates.

Another reason was advanced this morning which is to the effect that if this reduction took place it would prevent the benefit of a general readjustment, on the General Rate Investigation, accruing to other sections of the country, or reductions, on other commodities would be impossible.

I believe that nothing that has been done to-day, or that is involved in the order which is being asked, will prevent the Board in the General Rate Investigation from studying the whole matter again if the railways choose to bring the matter to the attention of the Board as part of the General Rate Investigation. I do not believe that it would be contended that this disposition of this case would prevent the matter from being taken up again as part of the General Rate Investigation, if needs be, if something new and material can be offered, either as a matter of law or as a matter of fact. I find myself abso-

lutely unable to agree that anything was shown this morning on the points of law or on the questions of fact that would justify a rehearing and the reopening of the case. It would be tantamount to assuming that the case was disposed of before a careful consideration was given to it by the Board, and with that I am unable to agree. Therefore I concur in what the Chief Commissioner has said.

COMMISSIONER BOYCE: For the reasons stated in the judgment of the learned Chief Commissioner, I am of opinion that this application should be dismissed.

COMMISSIONER LAWRENCE: I dissent from the decision of my brother Commissioners.

If as stated by Mr. Fraser this morning on behalf of the Canadian National Railways, that they will lose a revenue of not less than \$75,000, and as he stated, nearer \$100,000 per annum, on account of this reduction in rates, it is a serious matter. I do not know, and to my knowledge it has not been stated, what revenue the Canadian Pacific Railway Company will lose. It has not been said whether it will be as much as that or not, but no doubt it will be considerable.

I think this case comes within the scope of the circular sent out by the Board last July, which stated:—

“Testimony now before the Board in cases already heard and in which no decision has been given, is not to be repeated. New and material evidence in such cases may be submitted in the usual way”.

I take it from that, that in cases where no decision had been rendered, new and material evidence may be submitted and the matter should come up in the General Rates Investigation.

Therefore I think the old rates, which were in effect before the decision on this application, should remain in effect and this case be included with others in the General Rate Investigation now in progress. Therefore I am unable to agree with the judgment of the Chief Commissioner and my colleagues.

COMMISSIONER OLIVER: I am unable to agree with the decision of the Chief Commissioner and the other members of the Board upon this application for a rehearing.

As I understand it, the hearing of the application for a reduction in the rates on high explosives took place some time in December, 1924, before a section of the Board. There is a right of appeal from the Board to the Board. I take it that it is the intention that that right of appeal shall be exercised in regard to decisions of a section of the Board, by an appeal to the whole Board. There has been no hearing of the case since that first hearing, which I think was in Montreal. I take it that the application of to-day is an application for the rehearing of a case first heard by a section of the Board and decided, properly within their rights, by that section of the Board. This is an appeal from that decision, for a rehearing of the case before the whole Board, and for a decision on the whole case.

As a member of the Board I have a duty to fulfil in giving my decision on this matter, and I can only say that I am not informed as to the merits of the case or as to any of the facts in regard to it, beyond what I have heard here this morning. And the merits of the case have been very lightly discussed here to-day. I realize—as my brother Commissioner Lawrence has said—that this is a matter of serious import to the railways, both as to amount of revenue and as to the question of principle. I would certainly wish to have the merits of the reduction in rates absolutely established before I would give my assent to that reduction, when we are facing, as we are, a contemplated general reduction of rates.

I am therefore of the opinion that the application for a rehearing should be granted, and that the rehearing should take place before the whole Board.

The CHIEF COMMISSIONER: The application is refused, Commissioners Lawrence and Oliver dissenting.

ORDER No. 37317

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company," for approval of its tariff of Maximum Sleeping and Parlour Car Tolls, C.R.C. No. S-12, on file with the Board under file No. 9451.19.

MONDAY, the 8th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—
The Board orders: That the applicant company's Standard Tariff of Maximum Sleeping and Parlour Car Tolls, C.R.C. No. S-12, on file with the Board under file No. 9451.19, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37318

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, 1919, for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-9, on file with the Board under file No. 9451.12.

MONDAY, the 8th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—
The Board orders: That the applicant company's Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-9, on file with the Board under file No. 9451.12, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37323

In the matter of the application of the Napierville Junction Railway Company, hereinafter called the "Applicant Company," for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-11, on file with the Board under file No. 9451.14.

TUESDAY, the 9th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—
The Board orders: That the applicant company's Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-11, on file with the Board under file No. 9451.14, be, and it is hereby, approved; and that the said tariff, with a reference to this order, be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

912.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XV

Ottawa, March 15, 1926

No. 26

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Application of the Grand Trunk Railway Company (Canadian National Railways) that the Board review the question of the allocation of the cost of the Main Street bridge, York, Ontario.

File 24822

JUDGMENT

CHIEF COMMISSIONER McKEOWN:

This is an application for review of the Board's Order No. 29923 in respect of the apportionment of costs of the construction of a highway bridge within the city of Toronto, known as the Main Street bridge. Full particulars concerning the allocation, which is now sought to be reviewed, are detailed in the judgment of Mr. Commissioner Boyce which I have had the pleasure of reading, and it is unnecessary that such particulars be repeated here. The application was originally heard in Toronto on July 5, 1922, before a Board consisting of the late Chief Commissioner, the present Assistant Chief Commissioner, Mr. Commissioner Boyce, the late Mr. Commissioner Rutherford, and Mr. Commissioner Lawrence. No decision followed that hearing, and the Board is now deprived of the presence of the late Chief Commissioner and the late Mr. Commissioner Rutherford. Such was the condition of the application on the 20th day of March last when it was spoken to at a meeting of the Board held in the city of Toronto; at which the Assistant Chief Commissioner and myself were sitting.

I am not concerned at present in discussing, and do not commit myself upon the question, whether the cost has been properly imposed upon the parties in interest under the order as it now stands, but am confining my attention to the question whether there is sufficient uncertainty concerning the order as to make it advisable that a rehearing should be had.

I have taken occasion to read carefully the record of the hearing of July 5, 1922, when this motion was first made, and am impressed with the fact that, as the argument developed, the late Chief Commissioner freely expressed himself as having been under a wrong impression regarding the facts involved in this case, and I think the only reasonable inference from his observations is that, had he been properly advised in that regard, it is very doubtful if the allocation would have been made as it stands in Order No. 29923, and I further observe that he there expressed himself as follows:—

"I look upon this as a very important case. In fact it may become a leading case upon this subject" (p. 5277).

It is pointed out with clearness in the instructive judgment of Mr. Commissioner Boyce, that a preceding judgment of the Board delivered in what is known as the King Street Bridge, Hamilton, case (25 C.R.C. 379) influenced, if it did not wholly direct, the judgment of the Chief Commissioner, as to the allocation here complained against, which judgment was concurred in by the Assistant Chief Commissioner and Mr. Commissioner Boyce. To illustrate this, attention may be drawn to the argument of Mr. Chisholm, who appeared for the Grand Trunk Railway Company at the hearing of this motion in July, 1922, and during his argument said to the Chief Commissioner (p. 5291),—

“Perhaps this is a little irrelevant, but I see in your judgment (the King Street, Hamilton, Bridge case) you stated that”—

and thereupon the learned counsel proceeded to distinguish between that case and the present one, saying,—

“This is not the same case as the King Street Bridge case or those other cases where there was an excavation. There was no excavation here.

“The CHIEF COMMISSIONER: That is a new idea to me, I would like to have that fact settled at once.

“Mr. CHISHOLM: I don't think there is any question about that.

“Mr. GEARY: You did not excavate our road, you took it away.

“The CHIEF COMMISSIONER: It is a fact then that the road was not excavated?

“Mr. GEARY: The railroad?

“The CHIEF COMMISSIONER: Yes?

And at p. 5293:—

“The CHIEF COMMISSIONER: I would like to have it settled, because I have been going on the principle all the way through that the railway company cut a hole in the street, which had to be bridged to get through it”.

And later on the same page he said:—

“I can see that it would make a difference”.

And on p. 5303:—

“I will go this far with you, and admit that I have learned some facts to-day that I did not know heretofore. I approached this all the way through until to-day on the assumption that the railway had cut a hole through the streets of the city. It evidently seems now that that is not the case.....

“I just drifted along; I thought it followed the King Street, Hamilton, case, where there was no question but that there had been a tunnel cut through the street.”

Later, and upon Mr. Chisholm expressing regret that he had not cited the necessary facts, the Chief Commissioner at p. 5304 is thus reported:—

“It is news to me. I always approached this as being on all-fours with the King Street, Hamilton, case, that there had been an excavation cutting away the street.”

And at the conclusion of the argument, the late Chief Commissioner in passing judgment on another aspect of the case, used the language quoted by Mr. Commissioner Boyce and found at pp. 5352-3 of the record, wherein he expressed himself as,—

“willing to admit that I was wrong in the facts of this case, and when we applied that principle to the other two cases in Hamilton they were pretty hazy. Before we lay down any further principles, I would like to consider the matter more fully.”

Unless some principle is at stake, or some injustice requires to be remedied, the extensive powers of review under section 51 of the Railway Act should not be exercised, but where manifestly there is a substantial doubt in the mind of the Board as to the correctness of the decision which is called in question, or where new facts altering the view then held are presented, I think an order for review should go. It seems clear to me that the observations of the late Chief Commissioner indicated a very strong doubt in his mind concerning the correctness of the allocation complained of, and as far as I am concerned, they certainly have raised substantial doubt in my own.

Not having heard argument upon the propriety of the apportionment complained of, I express no view upon that point, but in my opinion the motion for review should be granted, notwithstanding the length of time which has elapsed since the order was made.

OTTAWA, February 11, 1926.

COMMISSIONER BOYCE:

By the Board's Order No. 29923, dated July 3, 1920, upon the application of the City of Toronto, the Grand Trunk Railway Company (subsequently acquired by the Canadian National Railways) was required to reconstruct the highway bridge over the railway tracks at Main street, Toronto, so as to make the bridge forty-six (46) feet wide, with sidewalks ten (10) feet wide attached to each side of the main bridge, and construct the approaches thereto as specified in the order. The applicant, the City of Toronto, was required to bear and pay the cost of surfacing both bridge and approaches and any necessary curbing, and that plans of the proposed bridge be filed for the approval of the Engineer of the Board; and that should the applicant desire to make the bridge wider than specified, it was given the right to do so; the expense of such additional width to be borne and paid by the applicant, all other work at the cost of the railway.

The plans of the bridge were approved November 16, 1921, by the Chief Engineer of the Board.

The judgment upon which order No. 29923 above mentioned was made is reported 25 C.R.C. p. 344, after a hearing at the city of Toronto, October 30, 1919.

Under date June 26, 1922, the Grand Trunk Railway applied to the Board to review the question of the allocation of cost under the original order, such application being made under sections 51 and 39 of the Railway Act.

The grounds stated in the application were as follows:—

(a) That since the judgment and order were made herein different circumstances have arisen in connection with a proposal to operate electric street railway cars across the bridge.

(b) That in any event the discretion which the Board exercised under section 39 of the Act in imposing the whole cost on the Grand Trunk Railway Company was not, under the circumstances, rightly exercised.

(c) That the original bridge was erected by the Grand Trunk for the purpose of protection of public travel and not on account of any excavation or other change made by that company in the highway level.

(d) That by the agreement between the Grand Trunk and the Township of York, the cost to the Grand Trunk of the protection to be afforded at this point was limited to the cost of the maintenance of the bridge thereby provided for.

(e) That the necessity for a larger bridge and consequent larger measure of protection was caused by the increase in the highway travel and, therefore, in accordance with the principles followed by the Board in cases of highway crossing protection, a substantial proportion of the cost of the work should be imposed on the municipality.

The application stated that a copy of it was concurrently sent to the city solicitor of Toronto.

In the meantime the Toronto Transportation Commission was desirous of laying its tracks across the bridge, thus constructed, and claimed the right to do so, which right was contested by the railway company.

The matter was set down for hearing of the dispute as to access to the bridge by the Toronto Transportation Commission, and of the application of the railway company, under sections 51 and 39 of the Railway Act, for review of the previous judgment and reconsideration of allocation of cost, and the parties were heard on July 5, 1922, by the Board, when judgment was reserved, with the stipulation that the Transportation Commission was not to use the bridge only when application was made to the Board by it for authority to cross the bridge with its cars.

The Toronto Transportation Commission made its formal application to the Board under date September 21, 1922, for permission to cross the line of the Grand Trunk Railway Company of Canada on Main street, in the city of Toronto, which street, by Order No. 29923 (previously referred to), was carried over the said line, and upon that application and subject to the reservation of the question as to contribution to be made by the Transportation Commission towards the cost and maintenance of the bridge as argued at the hearing, by Order No. 32956, dated October 10, 1922, the Transportation Commission was permitted, temporarily, and pending decision of the Board upon all matters involved in the application of the railway company that the Board review the question of allocation of the cost of the bridge, and subject thereto, to cross with its street railway the line of the Grand Trunk Railway Company of Canada upon the highway, known as Main street, in the city of Toronto.

The Grand Trunk Railway System became absorbed in the Canadian National Railway System, and the application for review, and for reallocation of costs, as well as the disposition of all matters heard at Ottawa, July 5, 1922, stands for judgment, the Canadian National Railways succeeding the Grand Trunk Railway as applicant for review and reallocation of cost.

While this application was pending, and before it had been fully argued, the late Chief Commissioner, who gave the original judgment, passed away, and in consequence the matter was set down for hearing in Toronto, March 19, 1925, when it was fully discussed in presence of counsel for the Canadian National Railway, for the Toronto Transportation Commission, and for the city of Toronto.

The late Chief Commissioner in his judgment in the City of Hamilton, vs. C.P.R. and Toronto H. & B. Railway Company (King Street Bridge Case, Hamilton) 25 C.R.C., p. 384, refers to cases of Sharpness New Docks, etc., vs. Attorney General *et al*, A.C. p. 356, and Attorney General, vs. The Great Northern Railway, 2 A.C., p. 356, and, commenting on the difference between section 46 of the Railway Clauses Consolidation Act, section 264 of our Railway Act, and the discretionary power vested in this Board under section 39 of the Railway Act says:—

"In my judgment, as a general principle, when a railway company excavates and cuts away a portion of a highway, they should be compelled to replace that highway by a substructure capable of carrying everything which the earth itself as it then existed would carry, etc."

And at the foot of the same page the late Chief Commissioner says:—

"In arriving at this decision I am actuated purely by the conditions in Hamilton as I find them from evidence and personal investigation, but the principle which I have herein enumerated, while applying generally, is indicated only in the present instance to apply to the bridge under discussion." (This is the King Street bridge, Hamilton).

In his judgment in this case, reported 25 C.R.C. p. 344 (at page 345), the late Chief Commissioner said, in following the judgment in the King Street, Hamilton case, reported above:—

“This case raises many of the questions dealt with in the case of the King street crossing at Hamilton, which was decided by the Board a few months ago, although it differs in the very important fact that the bridge under discussion is physically capable of carrying the traffic without danger of a breakdown, whereas, in the case of the King Street bridge at Hamilton, it was admitted by all parties that the bridge, under present conditions, was not physically capable of carrying the loads passing over it.”

And he proceeded, p. 346:—

“However, for the reasons set forth in the judgment in the King Street case, I do not feel that this Board should be bound by the decision of the House of Lords in the case just referred to (Sharpness Case) and can only reiterate the principle which I enunciated in the King Street case. (See p. 384 par. 2)”.

The reference “see page 384, par. 2” is to 25 C.R.C. (King Street case), and as will be seen, the fact as to severance of the continuity of the highway is therein specially referred to. This paragraph in that judgment (p. 384, par. 2) immediately precedes the paragraph 1 first quoted in which the general principle based on these facts is affirmed.

It will be seen from the foregoing that in deciding this case the late Chief Commissioner presumed that one of the main facts upon which he based his judgment was identical with the principal which he laid down so clearly and emphatically in the King Street Hamilton case cited above, viz: The fact that the continuity of the highway in this case, as in the King Street case, was broken by the construction of the railway line, and that, the basic facts being the same in both cases, the principle he affirmed in the King Street case, in disregard, for that reason, of the Sharpness case, was also applicable to and governed his decision in this case.

Now this is one of the main complaints of the railway company and it appears to be substantiated, viz: that in the Main Street Bridge case (that is this case), the railway company did not excavate and cut away a portion of the highway. I do not think there is any doubt about that, and therefore the railway company says that in applying the principle of the King Street case to this case the late Chief Commissioner was mistaken in his facts.

It will be observed by reference to the quotations from the King Street case, that the late Chief Commissioner guarded carefully the affirmation of the principle there laid down and linked it closely to the facts as therein set forth, namely, the severance of the railway company of the continuity of the highway necessitating the erection of the bridge.

The effect of this is to tie down the discretion given to the Board by section 39 to the particular state of facts emphasized in the King Street case with the reservation, I think, that the principle upon which it was applied in that case was limited to the facts in that case, and the principle was extended later on in delivering the judgment in this case, only because it was concluded by the late Chief Commissioner that the facts were so similar as to bring the *ratio decidendi* on a parity with the former decision.

That there was a serious doubt in the mind of the late Chief Commissioner as to his misconception of the facts in this case, when he applied the principle in the King Street case, is apparent in the statement of the late Chief Com-

missioner at the hearing in Toronto, July 5, 1922, where he says (Vol. 395, pp. 5352-3) as follows:—

“It is not a question of the difference in the cost altogether of building it; there is a principle involved in this case, and I think it is something the Board ought to give a good deal of consideration to.

“We thought we were determining the question of principle in the King Street, Hamilton case, and I do not think any member of the Board wishes to depart from it. I am willing to admit that I was wrong in the facts of this case, and when we applied that principle to the other two cases in Hamilton they were pretty hazy. Before we lay down any further principles I would like to consider the matter more fully.”

The quotation at least indicated that the late Chief Commissioner was under a misapprehension as to the facts in this case when he applied the principle in the King Street case, and that before going further in carrying out the principle, he desired that the matter be considered more fully.

The railway company relies in its application for review upon the fact which is fairly apparent, that under misapprehension which the late Chief Commissioner apparently admitted, the principle of the former decision was erroneously applied, upon misconception of material facts which had they been brought to the attention of the late Chief Commissioner, before writing his judgment, might have affected his view as to the judicial discretion to be exercised in the allocation of the cost of the work.

Section 39 of the Act leaves the Board wide discretion as to allocation of cost of any work ordered by the Board, but the judgment plainly justifies the exercise of that discretion only because of a particular state of facts, and it does seem to me that the exercise of the discretion, in the way it was exercised therein, was because of the assumption that the facts are the same as in the King Street case.

One marked difference, aside from the mistaken view of the facts as to separation of the continuity of the highway referred to above, lies in the reference of the late Chief Commissioner in his judgment to the fact that the bridge under discussion in this case is physically capable of carrying the traffic without danger of a breakdown, whereas in the case of the King street bridge at Hamilton it was admitted by all parties that the bridge under present conditions was not physically capable of carrying the load over it. It is also to be borne in mind that since the judgment and order were made, in this case, the operation over the bridge by the Toronto Transportation Commission of its electric car system, and the claim by the railway company that that commission should contribute to cost of construction and maintenance, are matters which, as new material, call for consideration by the Board and are standing for such consideration.

If I am right on the facts with regard to this bridge, and I think it admits of no controversy, the bridge was purely a highway bridge originally built for the purpose of public highway travel, and not as a result of the excavation or other change made by the railway company in the highway level.

The application is made under section 51 of the Railway Act. My view is that, wide as are the powers of the Board to re-open any matter or re-view any decision under that section, such power ought not to be exercised unless there is clearly a doubt in the mind of the Board as to the correctness of the former decision, or there be submitted new facts, not before the Board at the time the decision was made, or that the conditions have changed. This principle is affirmed in *American Coal Co. vs. M.C.R.* 21 C.R.C. 15.

The finality of the Board's decision is, as a rule, to be upheld, except for the reasons mentioned.

The bridge was built under an agreement with the township, referred to in the evidence, which agreement is dated June 25, 1884. That agreement contained the following clause which was referred to in the evidence:—

“That the company will keep the roadway except at the bridge in repair for a period of four years from the date hereof; the bridge its embankment approaches and guards they will always maintain and keep in good order repair that is so long as the new road is used as a public highway.”

It was argued that this agreement indicated the extent of the burden of maintenance which the railway company was to assume. It is, however, to be borne in mind, as by reference to the covenant it will appear, that the liability of the railway company as to repairs is limited by the conditions. For instance, that which was then a country road is now a city street and the bridge was built to serve the traffic on the new road, and the covenant was to maintain that “in good order repair.”

I can hardly concur in the contention that these words involved a liability, imposed by contract, to rebuild the bridge or substitute a new bridge suitable to the changed and changing conditions of a city street and the ever-growing traffic incident thereto. As a covenant in an agreement I have grave doubts as to such a construction as to the relative liabilities of the parties being so extended and enlarged.

In the Myrtle Bridge case (Grand Trunk Railway vs. Canadian Pacific Railway, 15 C.R.C. 433), which is a case bearing points of similarity, the decision, when analyzed, does not, I think, apply to such a case as this. In the Myrtle case one railway was carried over another railway by a bridge, under a covenant by the junior railway as to maintenance of the bridge. The junior railway was underneath the bridge and the maintenance of the bridge by the junior railway involved its obligation not to endanger the property, fixed or movable, of the senior railway, carried by the bridge. The conditions are not the same here. This bridge is an ordinary highway bridge and was built for highway travel, and the covenant, I think, cannot be extended to include the possible construction of a new bridge as I have above set forth.

The King Street case, Hamilton, was decided apart from contract. The decision in this case is based upon contract. In Hamilton, vs. C.P.R. and T.H. & B. Railway, 20 C.R.C. p. 165, the Myrtle case is commented upon as being different in fact, and at p. 165 the difference between the railway bridge and the highway bridge is also commented upon. Now the judgment of the late Chief Commissioner points out that “this bridge is physically in sufficient condition to carry any load of traffic which the public wish to take over it.” Therefore, it is kept in “good order repair” in terms of the agreement, beyond which the obligation of the railway company does not go and should not be extended. What is asked by the city and awarded by the Board upon admitted misconception as to similarity in facts to the King Street case, is that the railway company while performing its contract to “maintain and keep in good order repair” should, at a time when that obligation has been performed, and is not in default, build an altogether new and different bridge for which there is no contract.

The language of the late Chief Commissioner, in his judgment, I think makes it clear that, but for his misconception as to the similarity of the facts in this case to the King Street case, he would have decided that the Sharpness Case—A.C. 1915, p. 655—governed the situation.

I refer to the following expression in his judgment:—

“However, for the reasons set forth in the judgment in the King Street case, I do not feel this Board should be bound by the decision of the House of Lords in the case just referred to (Sharpness case), and can only reiterate the principle which I enunciated in the King Street case as follows:”

Then he states the facts, which distinguish, in his opinion, this case from the Sharpness case.

It seems to me that upon this application the Board has to decide whether it has doubts as to the correctness of its former judgment because of the mistaken assumption that the facts were the same as in the King Street case. That is, whether the Board will follow strictly the decision in the King Street case, and will apply the principle there laid down in similar applications only where the facts are in harmony with it, viz., where the railway has severed the highway.

If the fact that the highway is severed by the railway, as in the King Street case, makes no difference, in the view of the Board, to the full exercise of the Board's judicial discretion under section 39 in allocating costs, and that in this case, eliminating that fact, the decision would be the same, and there would be no reason to order a rehearing as a supplementary or explanatory judgment might suffice. The difficulty is that a comparison of the judgment in the two cases shows that the one is closely linked with and based upon the other, and the principle in the latter case (this case) is based upon that laid down in the former case (King Street case), because of the mistaken view that the facts are identical which it subsequently appears is not the case. There having been a misconception admitted by the late Chief Commissioner subsequent to his judgment, as to the facts which distinguished the application of the Sharpness case to the facts here, the Board has to consider whether the decision arrived at is right and ought to be supported in the absence of those facts which the late Chief Commissioner expressly stated in his judgment, and evidently thought were vital to that principle.

An important principle is involved and the situation is by no means free from doubt nor from the prospect of future embarrassment to the Board. At present neither of the cases referred to can be cited, for the reasons mentioned, in support of a general principle, unless in a case where the facts are identical, and I confess to a great deal of hesitation about narrowing the application of section 39 to a particular line of facts.

I think this is a case where it may well be said that there is some doubt as to the correctness of the former decision, and because of that, and because of the changed situation caused by the advent of the street railway traffic of the Toronto Transportation Commission and of the considerations to be given to the agreement between the township and the Grand Trunk Railway Company; and because of the importance of the principles involved, I would review the decision embodied in Order No. 29923 and rehear, so far as it is necessary, the whole application, so that all questions, and the interests of all parties, and all principles involved, may be fully discussed and settled. It will not be necessary to repeat the evidence already given, but new and additional evidence may be put in and argument directed to the features I have set out, as well as to any other features that may be pertinent and relevant to the case.

Order should go accordingly.

OTTAWA, January 27, 1926.

Assistant Chief Commissioner McLean and Commissioner Lawrence concurred.

Application of Woodward's Limited, Vancouver, B.C., for a ruling as to whether under the provisions of Canadian Freight Association Tariff 1-C, C.R.C. No. 96, and in respect to a shipment of perfume made from Toronto on May 15, 1925, the rate shown in Item 245-A of said tariff is properly applicable.

File 34439

REPORT OF CHIEF TRAFFIC OFFICER OF THE BOARD

This Report is issuing as the

RULING

of the Board in this matter.

Applicant asks the question whether, under the provisions of Canadian Freight Association Tariff 1-C, C.R.C. No. 96, and in respect to a shipment of perfume made from Toronto on May 15, 1925, the rate shown in item 245-A of said tariff is properly applicable.

In the original tariff this item read as follows:—

Drugs, Medicines and Chemicals, etc., in boxes, except as otherwise provided, viz., O.R.W.:—

Acid, acetic
Ammonia, nitrate of
Balsam, fir
Bitters
Camphor
Chalk, precipitated
Chemicals
Cigarettes, cubeb
Colour, butter
Colour, chocolate
Confections, licorice
Cotton, absorbent
Crystals, vanilla
Dressings, surgical
Drugs
Dyes (packed in cabinets in boxes)
Dye Stuffs
Extracts, flavouring
Extracts, medicinal
Food (prepared), baby
Glycerine, other than crude
Gum Arabic
Jelly, petroleum
Leaves, lavender

Licorice
Medicines
Milk, malted
Milk, sugar of
Milking
Napkins, sanitary
Oil, fusel
Oils, medicinal
Plasters, medicinal
Plasters, surgical
Salts, bath
Smoke (condensed), in glass bottles
Sodium, Sulphite of
Toilet Preparations, viz:—
Creams, face
Paste, tooth
Powders, toilet
Powders, tooth
Shampoos
Vaseline
Vitriol, blue, in bags
Washes, tooth
Witch Hazel
Wood Pulp, Cellulose

NOTE.—Rates named will not apply on the following named articles:—

Acids, viz:—	Explosives	Phosphorus
Muriatic	Gases of any description	Toilet Preparations not specifically provided for in this item.
Nitric	Oils, essential	
Sulphuric	Opium	

By reason of the note and the fact of perfumery not being specifically mentioned under the heading of Toilet Preparations shown in this item, I do not consider it would apply on perfume. However, in Supplement No. 29 to this

tariff, effective January 2, 1925, the description of this item was changed to read as follows:—

Drugs, Medicines and Chemicals, etc., in boxes, except as otherwise provided, viz., O.R.W.:—

Acid, acetic	Leaves, lavender
Ammonia, nitrate of	Licorice
Balsam, fir	Medicines
Bitters	Milk, malted
Camphor	Milk, sugar of
Chalk, precipitated	Milkine
Chemicals	Napkins, sanitary
Cigarettes, cubeb	Oil, fusel
Colour, butter	Oils, medicinal
Colour, chocolate	Petrolatum or Petrolatum Prepara-
Confections, licorice	tions made of Petroleum or
Cotton, absorbent	Petroleum products
Crystals, vanilla	Plasters, medicinal
Dressings, surgical	Plasters, surgical
Drugs	Salts, bath
Dyes (packed in cabinets in boxes)	Smoke (condensed), in glass bottles
Dye Stuffs	Sodium, Sulphite of
Extracts, flavouring	<i>Toilet Preparations</i>
Extracts, medicinal	Vitriol, blue, in bags
Food (prepared), baby	Witch Hazel
Glycerine, other than crude	Wood Pulp, Cellulose
Gum Arabic	

NOTE.—Rates named will not apply on the following named articles:—

Acids, viz:—	Explosives	Opium
Muriatic	Gases of any description	Phosphorus
Nitric	Oils, essential	
Sulphuric		

It will be observed the note and the specific list embraced under the heading "Toilet Preparations" was omitted in the amended item. The term "Toilet Preparations" as in the tariff item in effect at the time this shipment moved, but in no way qualified, is obviously a rather general term, and in my opinion would consequently apply on perfume, which I consider to be a toilet preparation. In my opinion, therefore, item 245-A, in effect at the time this shipment moved, would apply on perfume.

W. E. CAMPBELL,
Chief Traffic Officer.

OTTAWA, February 18, 1926.

Application of the Niagara, St. Catharines and Toronto Railway Company for an Order, under section 325, subsection 5, of the Railway Act 1919, as amended in 1925, authorizing an increase in fares upon what is known as the local lines in the towns of Merritton and Thorold, and the village of Port Dalhousie, to the same basis as those provided for in the city of St. Catharines.

(File No. 34322)

JUDGMENT

CHIEF COMMISSIONER McKEOWN:

This application was heard in Ottawa on January 19, 1926.

The applicant company is the owner of an electric railway running from Port Dalhousie to the town of Thorold, a distance of a little over fourteen miles, passing through two intervening townships, as well as through the city of St. Catharines and the town of Merritton.

The right of the applicant company to operate a railway through such city and towns is confirmed by several agreements entered into between the applicant company and the localities interested, which may be summarized as follows:—

(a) An agreement with the municipal corporation of the village of Port Dalhousie, dated the 16th day of April, 1900, confirmed by by-law of the said village of Port Dalhousie passed on 5th day of April, 1900, in which authority is given to the applicant company to maintain and operate a portion of its branch line running from the city of St. Catharines to the village of Port Dalhousie. The franchise granted under said agreement is not subject to any time limit, but rules and regulations to be observed by the applicant company are set out therein, and as far as the same have any bearing upon this application they will be referred to later.

(b) A by-law, No. 271, of the municipal corporation of the village of Merritton, concerning the applicant company, passed and adopted on 14th day of July, 1914, reciting, *inter alia*, that the corporation has deemed it advisable to renew the franchise then expired, empowering the applicant company to continue to operate its line through the village of Merritton, under conditions mentioned therein for a period of fifteen years from the date of the coming into effect of said by-law; that is to say, until the 14th day of July, 1929.

(c) A by-law of the municipal corporation of the town of Thorold, No. 302, concerning the applicant company, passed in Council at Thorold on the 18th day of December, 1911, empowering a renewal of the franchise then expired, for a period of fifteen years from the date of the passing of said by-law; that is to say, until the 18th day of December, 1926.

An agreement securing running rights under certain conditions had been entered into by the applicant company with the city of St. Catharines, but by mutual consent such agreement has been cancelled and a new agreement substituted therefor. The pertinent feature of all such agreements affecting this application is the several schedules of rates and fares therein agreed to, for this application is for an increased schedule of rates at variance with those provided in the agreements above indicated, and which may be summarized as follows:—

In the by-law enacted by the village of Port Dalhousie, the rate of fare from Port Dalhousie to St. Catharines as chargeable by the applicant company was not to exceed five cents.

As regards the village of Merritton, more varied conditions exist providing for a charge not to exceed five cents for a continuous journey from any point in the village of Merritton to any point in the city of St. Catharines, including a transfer to Victoria Lawn Cemetery, and to any point in the town of Thorold, and *vice versa*: six tickets for twenty-five cents being provided for, as well as school children's tickets at the rate of ten for twenty-five cents, good from Merritton to St. Catharines, good between the hours named in the agreement.

As regards the town of Thorold, the agreement provided for the use of school children's tickets, good between Thorold and St. Catharines, at the rate of twenty for one dollar; also five-cent workmen's tickets to be used on the main line of the railway: fifteen cent round trip tickets between Thorold and St. Catharines, on sale on the local car lines; eight tickets for fifty cents, good on local lines only between St. Catharines and Thorold.

The conditions as to the purchase of tickets in the city of St. Catharines have no bearing upon this application, because of the new agreement lately entered into whereby such preceding rates were cancelled.

For some years, the operation of this railway under the schedule of rates provided in the agreement alluded to has been attended with a very material loss, and the present application is for an order of the Board to permit a schedule of fares in substitution for those heretofore existing, and under which service may be rendered at actual cost to the applicant company. The evidence spread before the Board shows that the service under the existing rates involves very

serious financial loss to the applicant company, which is shown by exhibit 6, as filed, to run between \$34,000 and \$59,000 a year, not including the loss on the Port Dalhousie section of the line. Applicant company says that it is impossible for it to continue the service under such conditions, and as a step preliminary to put this business on a satisfactory basis it has concluded a new agreement with the city of St. Catharines, whereunder the company is allowed increased fares within that city, and, subject to the sanction of the Board, and for the considerations detailed, the city of St. Catharines has assented to such increase in fares, a schedule of which is set out below, and the sanction of the Board to the maximum rates applicable under such agreement was signified by order of this Board No. 37106, dated December 2, 1925.

But by the terms of said agreement, in order to bring into existence the schedule of fares set out therein, and agreed to on the part of the city of St. Catharines, it is necessary that such rates shall be applicable throughout its line including the village of Port Dalhousie, and the towns of Merritton and Thorold, and it will be observed that such action involves setting aside existing agreements as to fares, and obtaining the Board's authority for the company to collect fares following the St. Catharines schedule now sought to be brought into force, in lieu of those set out in the said agreements with the applicant company on the one hand, and the village of Port Dalhousie and the towns of Merritton and Thorold on the other; and this application is launched for the purpose of securing the Board's permission to put into effect, as regards Port Dalhousie, Merritton and Thorold, such schedule of fares as agreed upon between the applicant company and the city of St. Catharines, whereby such schedule of fares will be made applicable throughout the entire distance traversed by the railway which, as observed above, is a little over fourteen miles.

The plan agreed to by the city of St. Catharines and the applicant company is that such distance shall be divided into three zones: Zone No. 1 from the southerly boundary of the village of Port Dalhousie to the northerly boundary of the city of St. Catharines; Zone 2, commencing at the point last named and carrying through the towns of Merritton and Thorold to the terminus of the road; and Zone 3 is created from the southerly boundary of the city of St. Catharines to the northerly boundary of the town of Thorold. The whole result of such zoning is, that to journey the entire fourteen miles a payment of two fares is necessary; one fare carries a passenger all through St. Catharines and Merritton, but from any point in either of the last mentioned localities two fares are payable to carry a passenger to either terminus of the line.

The fares embodied in the agreement above referred to are as follows:—

FARES SCHEDULE

Item	Adults		Night fare midnight to 5.30 a.m.	Children 51 inches in height and under		School children
	Cash	Tickets		Cash	Tickets	
A.....	5 cts.	5 for 25 cts.	10 cts.	3 cts.	9 for 25 cts.	7 for 25 cts.
B.....	6 cts.	9 for 50 cts.	10 cts.	3 cts.	9 for 25 cts.	7 for 25 cts.
C.....	7 cts.	4 for 25 cts.	15 cts.	4 cts.	7 for 25 cts.	7 for 25 cts.
D.....	8 cts.	7 for 50 cts.	15 cts.	4 cts.	7 for 25 cts.	7 for 25 cts.
E.....	9 cts.	6 for 50 cts.	15 cts.	5 cts.	6 for 25 cts.	6 for 25 cts.

As remarked above, the rate to be imposed under the above schedule is to be a sum sufficient to operate the service at cost, after certain deductions are made from the gross receipts, and these deductions will be referred to below. But the object of dividing the schedule under the letters A, B, C, D, and E, is in order that under the terms of the agreement the fares may be raised or lowered according as to whether the sum total of the applicant company's

receipts is sufficient to provide such service at cost, or otherwise, and the rate presently enforceable is indicated in the above schedule by the letter C; and by section 40 of the agreement, special provision is made for the reduction or increase of fares as outlined in the schedule.

Under section 29 of the agreement, the gross receipts are to be applied, firstly, to operating expenses; then to a repair, maintenance and depreciation reserve, as set out in the terms of such section; then to the authorized return to the applicant company upon monies to be provided for the extension and improvement of its line, at the rate of six per centum per annum. In effect the provision is, that the applicant company is to have no return at all upon its investment up to the present, but, upon the funds to be provided in order that repairs to the road and its terminals may be effected, a return of six per cent upon such last mentioned amount to be allowed to the company, and after such amounts are deducted from the gross receipts, if it is apparent that rates can be provided lower than those presently to be put into effect, such course is to be followed. If, on the other hand, an insufficient amount be received, the rates may be increased to that extent, and in accordance with such schedule.

It is not denied that the substitution of the rates indicated in the schedule contained in the agreement between the city of St. Catharines and the applicant company will result in an increase in fares payable throughout, and the justification for the proposed schedule is the very large annual deficit in the operation of the railway, which the applicant company says cannot be continued, or else it will lead to the abandonment of the road, unless the applicant company is minded to carry on the serious annual loss now occasioned.

As regards the individual interest of each locality in the proposed change of rates, it is to be noted that the burden of the increased fares falls much more heavily on St. Catharines than upon any of the other towns involved, inasmuch as the approximate population of St. Catharines is 22,000, Port Dalhousie 1,500, Thorold 5,000, and Merritton 2,600. The mileage of railway within Port Dalhousie is 0.89 miles, between the boundaries of Port Dalhousie and St. Catharines 3.06 miles, within St. Catharines 7.2 miles, Merritton 2.18 miles, Thorold 0.78 miles, and the calculations submitted to the Board, on their face, establish the fact that the daily travel to St. Catharines is 2,598, Merritton 1,362, Thorold 727; that of St. Catharines being 55.43 per cent, Merritton 29.06 per cent, and Thorold 15.51 per cent.

The reasonableness of the rate of increase asked for was succinctly commented upon by the Assistant Chief Commissioner during the hearing, at p. 749 of the record, thus:—

“I was just making a computation, Mr. Geary, and I want to draw your attention to it. If you will look at exhibit No. 6, which is a statement of revenues and expenses of the Niagara, St. Catharines and Toronto Railway, St. Catharines local lines, St. Catharines to Thorold, you will see that the revenue for 1924 amounted in round figures to \$106,000, with operating expenses of \$156,000 in round numbers; if you add 29 per cent to the revenues, or \$30,000 in round numbers, it would leave, according to the figures for whatever they are worth, a deficit of \$19,000. If you take the figures for the Port Dalhousie line for the year 1924 and add 29 per cent, it would be in round numbers \$15,000 for whatever these figures may be worth, which would still leave red figures of \$6,000.”

It is apparent that while all the localities involved have a substantial interest in the result of this application, that of the city of St. Catharines is much larger than any other; and while it is alleged that certain inducements had been held out to the latter city in the way of terminals which may have influenced its decision, yet apart from that, the financial condition of the road under the present circumstances certainly makes some move necessary, and what seems to be the inherent fairness of the amount to be charged, as com-

pared with the services in other places; as well as the reasonableness of the increase as compared with the amount necessary to break even—all these considerations lead to the conclusion that this application is not unreasonable, and that the provisions of the agreement entered into between the city of St. Catharines and the applicant company seem necessary in order to meet the situation from a financial standpoint.

It is to be noted that this application is not for the purpose of raising revenue to recoup previous losses, nor to provide a dividend upon, or a sinking fund applicable to, previous investments made by the applicant company, but under such agreement, and after providing operating and other expenses, including depreciation and a return of six per cent upon future investments, which considering the present condition of the road will be material—after the funds for this purpose are provided, no advantage at all is to accrue to the company since the agreement provides that service shall be rendered at cost; and if the rates which the applicant company seeks to have made effective produce a revenue larger than is necessary for such purpose, the fares are to be lowered as provided by the schedule, thereby giving the full benefit of such surplus earnings to the public using such railway.

I have taken occasion to read carefully the provisions contained in the agreement, and think they are reasonable and fair. While by order of the Board No. 37106, the maximum rates provided in the agreement are now authorized as far as the city of St. Catharines is concerned, such agreement contains a section providing for uniformity in rates according to the fares schedule set forth in section 37 for each and all of the several fare zones above alluded to, which means that such fares cannot be collected in the city of St. Catharines unless they are by order of the Board permitted throughout the localities now brought before us in this application.

Decisions of the Board in previous cases make it unnecessary to deal at any length with the contention put forward that, inasmuch as the existing agreements provide certain rates lower than those now asked for, it is not open to the Board to approve the present application. The case of the City of Montreal vs. Grand Trunk Railway Company (25 C.R.C. 448) is sufficient authority for disposition.

I think this application should be allowed.

OTTAWA, February 19, 1926.

Assistant Chief Commissioner McLean, Deputy Chief Commissioner Vien, and Commissioner Oliver concurred.

In the matter of the Order of the Board No. 35839, dated November 29, 1924, authorizing the Corporation of the Town of Stamford, at its own expense, to construct and maintain a Highway Crossing of the Niagara, St. Catharines and Toronto Railway on Fourth avenue, in the Township of Stamford, Province of Ontario:

And the application of the Canadian National Railways that Order No. 35839 be amended so as to make it clear that all cost of additional protection at this Crossing be borne by the Municipality of the Township of Stamford.

File No. 3498.34.

JUDGMENT

CHIEF COMMISSIONER McKEOWN:

This application was heard in Ottawa on 17th day of March, 1925.

On the 29th day of November, 1924, upon the application of the town of Stamford, for authority to construct a highway crossing over the Niagara, St.

Catharines and Toronto Railway at Fourth avenue within the said town of Stamford, this Board made Order No. 35839 which directed,—

“That the applicant be, and it is hereby, authorized, at its own expense, to construct and maintain a highway crossing over the Niagara, St. Catharines and Toronto Railway on Fourth avenue, in the township of Stamford, province of Ontario, as shown on the plan and profile on file with the Board under file No. 3498.34; the proposed crossing to be constructed in accordance with ‘The Standard Regulations of the Board Affecting Highway Crossings, as amended May 4, 1910.’”

The present application is made on behalf of the Canadian National Railways, the successor in title of the Niagara, St. Catharines and Toronto Railway Company, asking that the order above in part set out be amended so as to make it clear that all costs of additional protection at this crossing, of whatever nature they may be, be borne by the municipal corporation of the township of Stamford.

The grounds urged in support of the motion to amend are, that for some time prior to, and at the time of, the application which resulted in the order, No. 35839, a private crossing existed at the place in question, such crossing having taken its rise from an agreement entered into on December 30, 1909, between the Niagara, St. Catharines and Toronto Railway Company of the first part, and the Canadian Ethinite Company, Limited and the American Cyanamid Company, Limited being of the second part, which agreement recited as follows,—

“Whereas the parties of the second part (that is to say, the above named companies) occupy premises adjacent to the right of way of the railway company at the point hereinafter mentioned, and are desirous of using a right of way across the railway company’s property for the purpose of securing access to such premises:—

The railway company agreed that the said parties should have right of access across its property for passengers and vehicles in connection with the business of said parties, so long as they should continue to occupy their then present premises.

And the agreement further provided that in consideration of such permission,—

“the parties of the second part hereby agree jointly and severally to release the railway company from and indemnify it against all claims for loss, costs or damages based on, arising out of or connected with said agreement or any act done thereunder or occurring from the use of such right of way by whomsoever made, whether occurring from the negligence of the railway company or otherwise.”

Applicant is now contending that in view of the terms of the above in part recited agreement, the order of the Board does not go far enough—that inasmuch as its issuance by the Board relieves the guarantors of their obligations to indemnify applicant under said agreement; such order, on its face, should relieve the railway company from any future liability for accident at said crossing, and impose the burden of such liability upon the municipality which has intervened between the parties to the agreement and thereby deprived the railway company of the benefits secured to it under the agreement.

Mr. Fraser, acting for the railway company, points out that while the original purpose of the crossing was to provide a means of access and egress for the employees and persons doing business with the manufacturing establishments named, yet in the course of years general traffic has been drawn to this crossing from another crossing a block away, and he says that everybody going and coming in that locality uses this crossing.

It is apparent to whatever extent the general public is influenced to use this crossing rather than the one previously established a block away, by so

much is the day being hastened when it will be necessary to order the installation of more expensive devices to secure public safety, and in making this motion the railway company is looking forward to avoid any portion of such outlay.

The view of the Assistant Chief Commissioner, as well as that of Mr. Commissioner Boyce, is that this situation can be properly dealt with when it arises, and I find myself in complete accord with that position. If occasion arises necessitating greater expense than is now necessary to ensure public protection at the crossing in question, steps to that end would not be taken without notice to the railway company and giving them an opportunity to urge all considerations relieving them of liability.

During the argument, it was pointed out by Mr. Commissioner Boyce, p. 139, that,—

“the Board has laid down the principle that it will make no order fixing future responsibility. We have been several times pressed in very plain instances to put that in an order.”

Reasons readily suggest themselves in favour of such procedure, which I think should be continued, for as remarked by the Assistant Chief Commissioner, “each application will be dealt with on the facts presented.”

I think this application should be dismissed.

OTTAWA, March 1, 1926.

Assistant Chief Commissioner McLean and Commissioners Boyce and Oliver concurred.

ORDER No. 37342

In the matter of the application of the Western Canada Livestock Union for an Order suspending the Canadian Pacific Railway Company's Tariff C.R.C. No. W-2801 and the Canadian National Railway's Tariff C.R.C. No. E-442, effective March 1, 1926, covering rates on cattle, hogs, and sheep from primary markets to sections in the prairie provinces, for feeding purposes.

File No. 27553.16

THURSDAY, the 25th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, February 24, 1926, in the presence of counsel for the Western Canada Livestock Union and the Canadian Pacific and Canadian National Railway Companies, the evidence offered, and what was alleged,—

The Board orders: That the said tariffs of the Canadian Pacific Railway Company, C.R.C. No. W-2801, and of the Canadian National Railways, C.R.C. No. W-442, effective March 1, 1926, and covering rates on cattle, hogs, and sheep from primary markets to sections in the prairie provinces, for feeding purposes, be, and they are hereby, suspended until a further hearing is held by the Board.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37347

In the matter of the General Order of the Board No. 425, dater November 13, 1925; Order No. 37183, dated December 23, 1925; and General Order No. 426, dated January 18, 1926, relating to amendments to tariffs on high explosives.

File No. 33502

THURSDAY, the 25th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the railway companies do not construe the said orders as applying to the rates on high explosives in carloads published from eastern Canadian shipping points to stations Port Arthur to Winnipeg, inclusive, and to certain stations west thereof, as covered by item 345-A of Agent Ransom's Tariff C.R.C. No. 110, which are in excess of the current first class rates; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That item 345-A in Agent Ransom's Tariff C.R.C. No. 110 be amended to reduce all rates established thereby from Beloeil and Dragon, Quebec, which are now higher than the current first class rates, to the current first class rates on high explosives, in carloads; the said tariff amendment to be effective within one week from the date of this order.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37348

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-18, on file with the Board under Case No. 4569.

FRIDAY, the 26th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer,—

The Board orders: That the said Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-18, on file with the Board under Case No. 4569, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37349

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant Company", under Section 330 of the Railway Act, 1919, for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-10, on file with the Board under file No. 9451.12.

FRIDAY, the 26th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-10, on file with the Board under file No. 9451.12, be, and it is hereby approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37350

In the matter of the application of the Esquimalt and Nanaimo Railway Company, hereinafter called the "Applicant Company", under Section 330 of the Railway Act, 1919, for approval of its Standard Tariff of Parlour Car Fares, C.R.C. No. S-11, on file with the Board under file No. 9451.16.

FRIDAY, the 26th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Tariff of Parlour Car Fares, C.R.C. No. S-11, one file with the Board under file No. 9451.16, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37351

In the matter of the application of the Kettle Valley Railway Company, hereinafter called the "Applicant Company", for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-6, on file with the Board under file No. 10262.2.

FRIDAY, the 26th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-6, on file with the Board under file No. 10262.2, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37353

In the matter of the application of the Edmonton, Dunvegan and British Columbia Railway Company, hereinafter called the "Applicant Company", for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-6, on file with the Board under file No. 30186.4.

FRIDAY, the 26th day of February, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-6, on file with the Board under file No. 30186.4, be, and it is hereby, approved; and that the said tariff, with a reference to this order, be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER NO. 37364

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants, under Section 334 of the Railway Act, 1919, for approval of their Standard Passenger Tariff, C.R.C. No. E-876, covering revised maximum fares on the Niagara, St. Catharines and Toronto Division, authorized under Order No. 37332, dated February 19, 1926, on file with the Board under file No. 34322.

THURSDAY, the 4th day of March, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders: That the applicants' said Standard Passenger Tariff, C.R.C. No. E-876, covering revised maximum fares on the Niagara, St. Catharines and Toronto Division, on file with the Board under file No. 34322, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 37365

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", for approval of Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. ES-16, WS-12, on file with the Board under file No. 548.16.

THURSDAY, the 4th day of March, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicants' said Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. ES-16, WS-12, on file with the Board under file No. 548.16, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 37368

In the matter of the application of the Napierville Junction Railway Company, hereinafter called the "Applicant Company," for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-12, on file with the Board under file No. 9451.14.

MONDAY, the 8th day of March, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Standard Tariff of Sleeping and Parlour Car Tolls of the applicant company, C.R.C. No. S-12, on file with the Board under file No. 9451.14, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 37369

In the matter of the application of the Wabash Railway Company, hereinafter called the "Applicant Company," for approval of its Standard Passenger Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-18, on file with the Board under file No. 9451.23.

MONDAY, the 8th day of March, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

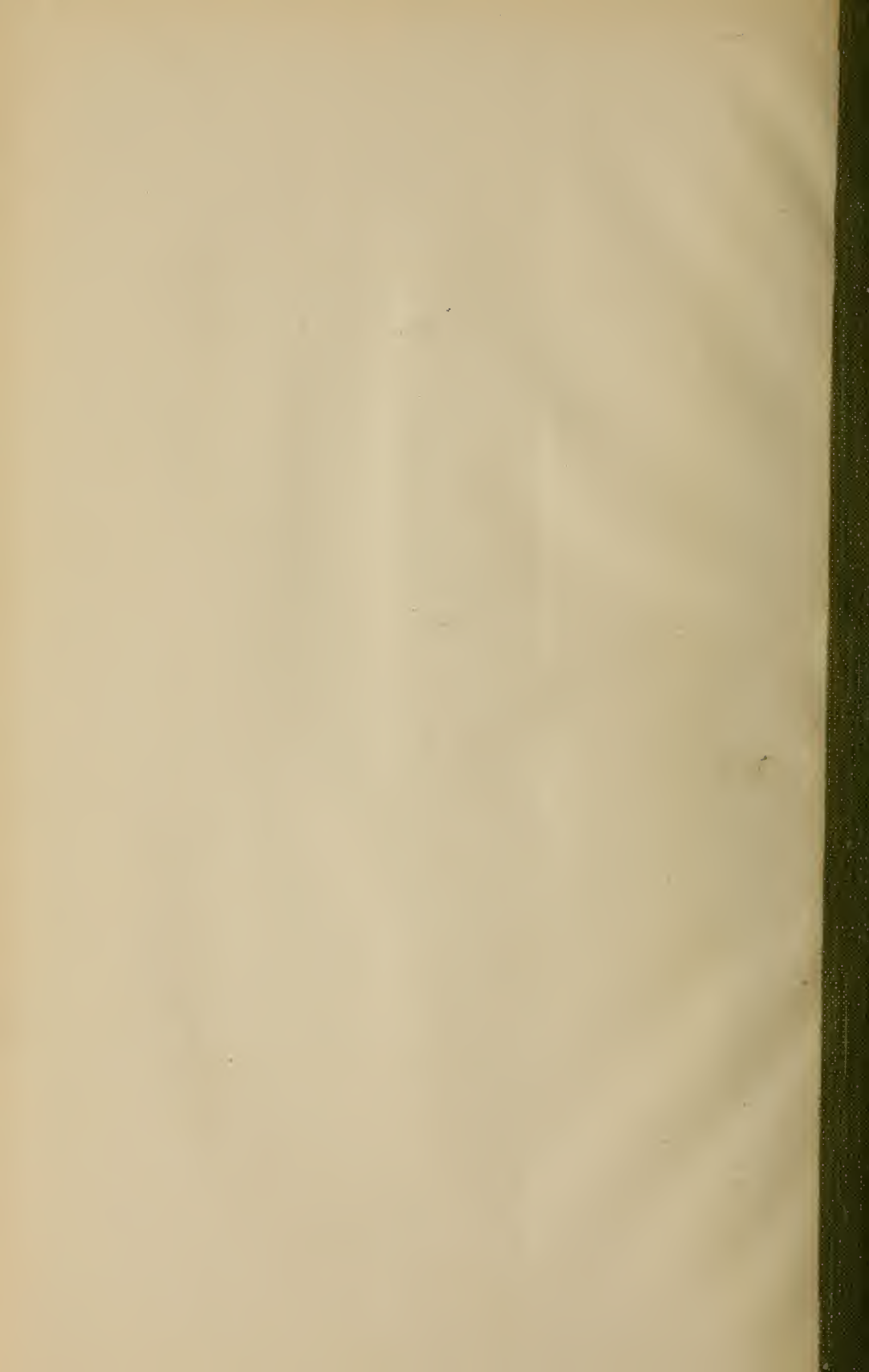
Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Standard Passenger Tariff of the applicant company, C.R.C. No. S-18, on file with the Board under file No. 9451.23, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

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T Judgments, Orders, Regulations and Rulings.
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